SUPREME COURT OF THE

OCTOBER TERM, [illegible]

No. [illegible]

LA REPUBLIQUE FRANÇAISE AND THE
FERMIERE DE L'ETAT DE FRANCE,
VICHY, PETITIONERS,

v.

THE SARATOGA VICHY SPRING COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES [illegible]
OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED [illegible]
CERTIORARI AND RECORDS FILED [illegible]

(18,630.)

(18,530.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 325.

LA REPUBLIQUE FRANÇAISE AND LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT THERMAL DE VICHY, PETITIONERS,

vs.

THE SARATOGA VICHY SPRING COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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a United States Circuit Court of Appeals for the Second Circuit.

LA REPUBLIQUE FRANÇAISE and LA COMPAGNIE FERMIÈRE DE l'ÉTABLISSEMENT Thermal de Vichy, Complainants, Appellants,
vs.
THE SARATOGA VICHY SPRING COMPANY, Defendant, Appellee.

Transcript of Record.

Appeal from the circuit court of the United States for the northern district of New York.

Printed under the direction of the clerk.

(Stamped:) United States circuit court of appeals, second circuit. Filed Mar. 26, 1900. William Parkin, clerk.

1 *Bill of Complaint.*

(Filed June 27, 1898.)

Circuit Court of the United States for the Northern District of New York.

To the honorable the judges of the circuit court of the United States for the northern district of New York, sitting as a court of equity:

La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, bring this their bill of complaint against Saratoga Vichy Spring Company.

And thereupon your orators allege and complain as follows:

First. That your orator La Republique Francaise is an independent State and one of the sovereign powers of the earth, having its main territory and chief seat of authority in that part of the continent of Europe designated and known as France, and that in its national character under French law it is denominated "The State," in which capacity its existence is, in legal contemplation, immutable and perpetual notwithstanding changes in the form of its government, or of dynasty, or succession, and by which term your said orator, for brevity of reference, will be hereinafter referred to.

2 Second. That your orator La Compagnie Fermiere de l'Etablissement de Vichy is a corporation duly organized and existing under and by virtue of the laws of the said State, and is hereinafter referred to as the "Vichy Company."

Third. That the Saratoga Vichy Spring Company is, as your orators are informed and believe, a corporation organized and existing under and by virtue of the laws of the State of New York, and a citizen of said State and an inhabitant of the northern district of New York.

Fourth. That this is a suit of a civil nature where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, in which there is a controversy between a citizen of a State, and foreign States, citizens or subjects, within the intent or meaning of the act of Congress in such case made and provided—to wit, a controversy between a citizen of the United States and of the State of New York on the one hand, and a foreign State, together with a foreign citizen or subject thereof, on the other hand.

Fifth. That within the aforementioned main territory of your orator the said State—to wit, in the political subdivision thereof denominated and known as the department of the Allier, there is a certain municipality, commune or town by the name of Vichy, the same being on the right bank of the River Allier, about two hundred and twenty-seven miles distant by railway, and in south-southeasterly direction, from the city of Paris, the capital of your said orator of the State, which said town of Vichy has been known in all civilized countries of the world since the discovery of the locality during the period of the Roman Empire, and at the same time celebrated and renowned for the waters obtained from several mineral
3 springs situated therein and thereabouts, the said waters being, and for ages prior to the facts hereinafter stated and complained of having been, universally called by the short and emphatic term of "Vichy" waters.

Sixth. That under the ancient monarchical system of France the feudal lords of the realm were the owners of all sources of springs, whether mineral or otherwise, and of all rivers, streams, rivulets and other waters enclosed by French territory. In the year 1444, Jean, lord of Vichy, being then seized and possessed of all the estates in lands and mineral springs then existing in and about the abovementioned town bearing the name of its feudal lord, sold the same, together with the castle of Vichy and its dependencies, including the mineral springs since known as the "Celestins," the "Grande Grille," the "Hospital," the "Parc," the "Lucas" and the "Puits Chomel" to Pierre, duke of Bourbon, in whom, and afterwards in whose heirs and descendants, the title and ownership of the same remained until the year 1531, when after the treason of the constable of Bourbon, the "Bourbonnais," by which terms the title, dignities, property and rights of the house of Bourbon *was* known, were confiscated by Francis the First, then King of France; whereupon all the estates of the said house of Bourbon in lands and other property, including the aforesaid mineral springs and all the territory about them, became vested in the Crown of France as represented by the family of the reigning sovereign, in whose possession and ownership the said mineral springs remained until the year 1790, when the same were united to the public domain of your orator the State, which thereupon became, and has ever since remained, the sole owner of the said mineral springs absolutely and forever.

Seventh. That afterwards—to wit, on or about the 10th day of June, 1853—your orator, the said State, duly acquired, and
4 has ever since remained the sole owner of, three other certain mineral springs discovered and developed since those men-

tioned in the foregoing paragraph were discovered and developed as aforesaid, which latter three springs are known and designated by the names "Brosson," "Mesdames" and "Hauterive," the first two of which are also situated in said town of Vichy, and the latter one in one of the adjoining districts, its name being derived from the locality itself, which is called "Hauterive."

Eighth. That since the said year 1853 all the said mineral springs have been and are still protected by law from trespass or diversion by a perimeter of protection embracing all that part of the said town of Vichy in which mineral springs of any kind are situated or operated, and extending into the adjoining villages or communes of "Abrest," "Vesse" and "Cusset."

Ninth. That at the same period—to wit, the said year 1853, and for many years previously thereto—the said mineral springs at Vichy were operated by the direct agency and control of the government of your orator, the said State, through certain officers and subordinates appointed for that purpose, by whom, under suitable rules and regulations, the public were afforded access to the springs to drink and bathe in the waters thereof, and who maintained thereat an elaborate thermal establishment, with various dependencies, for the use and enjoyment of visitors thereto, and, under the same authority, drew from the said springs large quantities of the said waters, and prepared and sold the same in bottles for use abroad in various parts of the world for such persons as could not resort to the said springs in person; all of which operations were then, and, in conjunction with the said Vichy Company, are still a source of large revenue to your orator, the said State.

Tenth. That the said waters by the name of "Vichy," in connection with the several names of the particular springs from which the said waters are, respectively, drawn, are, and for centuries past have been, celebrated throughout the world for their medical, therapeutic and curative qualities; and, by reason of the latter qualities, such has been their wide celebrity and extensive sale and use, not only at the thermal estab-ment at Vichy, but in numerous other places elsewhere, and, in fact, in all civilized countries in the world, including the United States of America, that the short name thereof—to wit, the word "Vichy"— as applied to mineral waters, has become of great value to your orator the State, and constitutes, and for a long period and long prior to the wrongful acts of the defendant, hereinafter stated, has constituted, an important and necessary incident and means to the sale and consumption of the said mineral waters.

Eleventh. That in or about the month of June, 1853, l'Empire Francais, the predecessor of your orator La Republique Francaise, in the government of the said State, acting by its several ministers and departments, and, finally, by the imperial authority of Napoleon the Third, then Emperor of the French, in consideration of a stated rental or tribute to your orator the said State, duly leased and conceded to the copartnership firm of Lebobe, Callou & Co., of the city of Paris, and of the said town of Vichy, France, the exclusive right and privilege of operating the aforesaid mineral springs at Vichy, including

the thermal establishment thereat, and all the rights and privileges thereunto appertaining and belonging, including the exclusive right and privilege of taking the waters from the said springs, and the preparation and sale thereof in bottles or other receptacles in other places and countries throughout the world, as well as the necessary incident and appurtenant privilege of designating, labeling and otherwise calling the said waters by their proper and customary appellation of "Vichy" waters, for the period of thirty-three
6 years from the 10th day of June, 1853; and that the said copartnership of Lebobe, Callou & Co. was subsequently converted into a company, designated by French law as *en commandite*, with Messrs. Lebobe and Callou, of the said copartnership firm, as sole managers, whereupon the latter company, in due form of law, succeeded to, and became possessed of, all the property, rights and privileges of the said copartnership firm of Lebobe, Callou & Co. in the premises.

Twelfth. That on or about the 27th day of December, 1862, by an imperial decree of Napoleon the Third, then, as aforesaid, Emperor of the French, the body corporate of your orator, The Vichy Company, was duly formed and established according to the laws of the said Empire Francais by the name and style of "Compagnie Fermiere de l'Etablissement Thermal de Vichy," and thereupon your said orator, The Vichy Company, in due form of law, succeeded to the aforesaid company en commandite, of whom Messrs. Lebobe and Callou were managers, as aforesaid, and at the same time acquired all its property, rights, privileges and franchises, including, and especially, all the rights and privileges conferred by the aforesaid lease and concession of the mineral springs and thermal establishment of Vichy, as well as the right to use the word "Vichy" to designate the said waters.

Thirteenth. That by virtue of an agreement, duly entered into between the minister of public works, commerce and agriculture of the said Empire Francais, and your orator The Vichy Company, which said agreement was subsequently duly ratified by the corps legislatif of the said Empire Francais, and soon thereafter, and on or about the 10th day of April, 1864, sanctioned by the imperial authority thereof, the period or duration of the said lease of the said springs and thermal establishment at Vichy, and their dependencies, made originally to the copartnership firm of Lebobe, Callou & Co.,
7 and afterwards duly acquired by your orator The Vichy Company, as aforesaid, was extended eighteen years longer, and again extended at a later date for a period of thirty years, so that the same will continue under existing conditions until the year 1934.

Fourteenth. That on the 4th day of September, 1870, the said Empire Francais was overthrown by the will of the people of France, and, after the intervention of a temporary or provisional government of short duration, all of the authority and powers, and all the rights, property, privileges and franchises vested in the said Empire Francais, including its property in the title to the said mineral springs and thermal establishment at Vichy, lawfully devolved upon your orator La Republique Francaise, whereupon your said

orator, as the government of the said State, duly became, and has ever since remained, the sole and exclusive owner of the aforesaid mineral springs and thermal establishment at Vichy, and entitled, subject to the terms of the said lease, to the exclusive property in and to the use and enjoyment of the same, including the right to designate and brand the said mineral waters by the name "Vichy."

Fifteenth. And your orator, The Vichy Company, further shows that since its acquisition of the said lease, and the right to operate the said mineral springs and thermal establishment at Vichy, as well as its predecessors aforesaid, has expended large sums of money in the improvement and embellishment of the same, and by its industry and enterprise, and by the industry and enterprise of its predecessors to whose right it has succeeded, as aforesaid, the fame and celebrity of said waters have become much more extended throughout the world, and the demand for the sale of the same in various countries, including the United States of America, has very largely increased. And your said orator further shows that it has

8 from time to time extended and developed the industrial operation of the said springs and the sale of their waters, and that since the year 1854 it has, among other things, evaporated the said waters and sold the salts and other resultant products of such evaporation by the name of "Vichy salts" for transportation to distant places and to be brought back to their original state of solution by the introduction of pure water; and that your orator has more recently prepared and still prepares the said salts and other resultant products of such evaporation in the form of powders, pastil-es and confections for the more convenient and palatable consumption thereof; and that the name "Vichy" as applied to mineral waters and the other products of the said springs is of great value to the said Vichy Company in the sale thereof, as well as of great value to your orator the State, as an incident to its ownership and ultimate property in the said springs.

Sixteenth. And your orators show that for many years past the waters of their springs aforesaid have been sold in bottles in large quantities throughout the United States and elsewhere.

The bottle by your orators used as aforesaid has been one of the means by which their waters have been known and identified all over the civilized world wherever their waters have been sold, and it has been of uniform shape and appearance continuously and uninterruptedly for many years. The bottle thus used in connection with your orators' waters has been of dark stained glass, about a foot high, and about three and one-fourth inches in diameter at its base. The body of the bottle, which has been approximately six inches in height, has been of substantially the same diameter, the diameter decreasing to form the upper part and neck of the bottle, all as appears by a specimen of one of your orators' bottles (bearing your orators' label, hereinafter described) produced herewith and filed and made a part hereof and marked "Complainants' Bottle."

9 And your orators further say that they have for many years past made use of a certain characteristic label which has been approximately five and one-half inches in height and in width

adapted to cover the body of your orators' bottle hereinbefore described. The said label of your orators has been printed chiefly in black upon a white ground and has consisted of a principal panel or section upon which the word "Vichy" has been conspicuously displayed, with a circular design below it combined with printed matter of a descriptive character. Below the principal panel displayed in white letters upon a black field or scroll has been the name of a particular spring, with printed matter upon each side, which has extended from one side of the label to within a short distance of the other. To the right and left of the principal panel in supplemental panels descriptive matter has been displayed; and at the edge of the label to the right matter descriptive of certain products by your orator produced and sold has been appropriately displayed. The principal parts or panels of the label are enclosed within substantially rectangular borders or lines, all as more fully appears by a specimen of your orators' label produced herewith and filed and made a part of this bill of complaint and marked "Complainants' Label."

And your orators' said label has been applied and used in connection with your orators' bottle, hereinbefore referred to, so as to surround and cover the body of the bottle in the form and manner shown in connection with your orators' bottle, hereinbefore referred to and marked "Complainants' Bottle."

And your orators say, on information and belief, that their said bottle was by them used in advance of all others; that their waters are, and long have been, known, recognized and identified both by said bottle and said label, and by the package formed by the application of said label to said bottle, and that before the acts of the defendant, hereinafter referred to, your orators were equitably entitled to be protected, not only in the exclusive use of the designation "Vichy" but also in the exclusive use of the said bottle and label, and were equitably entitled to be protected against any and every unfair, unnecessary and inequitable imitation of their label, bottle and the package formed by the application of the label to the bottle, as hereinbefore set forth.

And your orators further allege that they are entitled to be protected in the exclusive use of the word "Vichy" as a trade name and as a commercial name and otherwise, by virtue of the treaties at present existing and in force between the Republic of France and the United States, and particularly the treaty between the United States and France and other nations, concluded at Paris on the 20th day of March, 1883, and proclaimed by the President of the United States on the 11th day of June, 1887, the eighth article of which treaty is as follows, to wit:

"ARTICLE VIII.

"The commercial name shall be protected in all the countries of the Union without obligation of deposit, whether it forms part or not of a trade or commercial mark."

Seventeenth. And your orators show, and further complaining, on information and belief, allege that the defendant The Saratoga Vichy Spring Company, without the license or consent of your orators, or either of them, well knowing your orators' rights in the premises, has heretofore, at the city of Saratoga, in the State of New York, and elsewhere, and is now, and for some time past has been, fraudulently and unlawfully making use, directly and indirectly, of your orators' said designation or trade-mark "Vichy" as a name or designation for a certain water or waters by it, the defendant, taken or drawn from a certain natural spring at or near the said city of Saratoga.

11 And your orators charge, on information and belief, that the said defendant has falsely and fraudulently made use of the word "Vichy," as aforesaid, as part of its corporate name and by means of labels, show-cards and in many other ways, and continues so to do in violation of your orators' rights in the premises and to their great loss and injury actually sustained.

And your orators charge, on information and belief, that the said defendant has falsely and fraudulently made use of your orators' said name or designation "Vichy," and to make sure of its fraudulent purposes in the premises has made use of a fraudulent imitation or imitations of your orators' bottle and label aforesaid. The simulated bottle thus by the defendant used has consisted of a bottle of dark stained glass, something less than a foot in height and something over three inches in diameter at its base with a body about six inches in height of decreasing diameter to form a neck; all as more fully appears by a specimen of the defendant's bottle (bearing one of the defendant's labels hereinafter described) produced and filed herewith and made a part hereof and marked "Defendant's Bottle."

And your orators charge that the said defendant has made use of simulated labels which have been in height about five inches and in width adapted to cover the body of the bottle, the labels being printed in black upon a white ground, the name "Vichy" being displayed upon the principal panel with printed matter upon supplementary or subordinate panels, the panels being enclosed within substantially rectangular lines or borders, all in simulation of your orators' label aforesaid and as more fully appears by a specimen of the defendant's said label herewith produced and made a part hereof and marked "Defendant's Label." And the labels thus by the defendant devised have been applied and used in connection with the said simulated bottle, the same forming a package very similar in appearance to that of your orators, as more fully appears by the specimen of the defendant's bottle having applied and at-

12 tached thereto a specimen of the defendant's said label, the bottle being marked as hereinbefore set forth "Defendant's Bottle."

And your orators charge, on information and belief, that the said bottle and label of the defendant were willfully and fraudulently made to resemble the bottle and label of your orators for the express purpose of misleading and deceiving the public and enabling the

sale of the defendant's water as and for your orators' water, and that by reason of the use by the defendant of the word "Vichy" and of the said bottle and label many persons have been deceived and misled to your orators' great loss and injury actually sustained.

Eighteenth. And your orators, on information and belief, charge that the said defendant has in other ways made use of the word "Vichy" by means of labels, show-cards, price-lists, circulars and otherwise, the purpose and object of the defendant being to cause its waters, taken or drawn from said spring at or near said city of Saratoga, to be known in the market and purchased and sold as "Vichy" and "Vichy water." Among the expedients which are now and for some time past have been availed of by the defendant to accomplish its unlawful and inequitable purpose have been certain labels which have differed from the label of the defendant hereinbefore described and which have consisted in part of the word "Vichy" and which have been used in connection with each other two labels upon each bottle. The said labels thus used, two upon each bottle, have been a body label and a neck label, the body label being of an oval shape with the words "Natural Saratoga Vichy water" displayed in curved lines thereon with a monogram conspicuously displayed, together with other words, all as appears by a specimen of the said label produced herewith and marked "Defendant's Label B." In connection with the label last aforesaid a certain neck label has been used consisting of the word "Saratoga" in very small type and the word "Vichy" in large and conspicuous type,
13 the label being adapted to be used as a neck label, all as more fully appears by the specimen produced herewith and marked "Defendant's Label C" and made a part hereof; and your orator- charges on information and belief that said two labels hereinbefore last described have been used by the defendant at the same time and contemporaneously with the label marked "Defendant's Label" and continue to be by the defendant used.

Your orators charge that the use by the defendant of the word "Vichy" in the different ways hereinbefore referred to and set forth and otherwise constitutes in each instance a violation and infringement of your orator's rights in the premises, and is in each instance inequitable and fraudulent, and that the use by the defendant of the word "Vichy" and its acts in the premises aforesaid constitute all and singular an unfair and inequitable competition, and tend to enable and promote the sale of the defendant's water as and for the water of your orators, whereby the public have been and are misled to their loss and injury, the profits which of right belong to your orators wrongfully diverted to the defendant, and the good will of your orators' business of selling "Vichy" trespassed upon and infringed, to your orators' great loss and injury actually sustained.

And your orators pray that they may have the relief in the premises to which in equity they are entitled as the same shall appear upon the facts to be just and equitable, and that they may have such relief the same as if it were here and now made the subject of a specific prayer.

Your orators say that the good will of their said business of sell-

ing their said "Vichy" or "Vichy water" is of very great value, amounting to much more than ten thousand dollars, and that they cannot with certainty state the exact amount of profits which have been diverted from your orators and to the said defendant, but upon information and belief charge that the amount of profits which have been fraudulently diverted to itself by the said defendant,
14 and which your orators are entitled to recover amounts to the full sum of ten thousand dollars, and prays that the said defendant may full and true disclosures make as to the same, and may be decreed to account therefor in full.

To the end, therefore, that your orators may obtain relief in the premises in this honorable court, where they can alone obtain relief, they humbly pray:

1. That the said Saratoga Vichy Spring Company may be made defendant to this bill of complaint to answer each and every allegation therein contained, but not under oath (an answer under oath being hereby expressly waived), the same and as fully as if directly interrogated as to each.

2. That the said Saratoga Vichy Spring Company, its officers, directors, clerks, attorneys, agents, servants and workmen be forever enjoined and restrained from in any form or manner whatsoever making use of the word "Vichy" directly or indirectly as the name or designation of any water or waters drawn or taken from the said spring at or near said city of Saratoga, and from using the word "Vichy" in any form or manner except as the same shall have been attached and applied by your orators to goods by them put upon the market, and from making use of the word "Vichy" as part of its corporate name, and from making use of labels like the label hereinbefore referred to and designated "Defendant's Label," and from making use of labels like the labels hereinbefore referred to and marked "Defendant's Label B" and "Defendant's Label C;" and otherwise in every way prohibiting and restraining the acts of the defendant hereinbefore referred to, and prohibiting and enjoining the defendant from doing any act or thing whatsoever which may be calculated to cause the sale of any water or waters not by your orators put upon the market under the name of or as and for "Vichy" or "Vichy waters."

15 3. That a restraining order and preliminary injunction be issued without delay, directed to the said Saratoga Vichy Spring Company, enjoining and restraining it as prayed in the preceding paragraph numbered two.

And, finally, to the end that equity may be done and that the relief herein prayed for and all other relief that it may be righteous in the premises to administer may be afforded your orators, may it please your honors such relief fully to grant and to award against the said Saratoga Vichy Spring Company, a writ of subpœna of the United States of America issuing out of and under the seal of this honorable court, commanding it on a day certain therein to be named, and under a certain penalty to be and appear in this honorable court, then and there to answer, all and singular, the premises,

and to stand to, perform and abide by such further order, direction and decree as may be made against it.

And your orators, as in duty bound, will ever pray, &c.

ROWLAND COX,
Solicitor for Complainants.

ROWLAND COX,
Of Counsel for Complainants.

Two exhibits, "Complainants' Bottle" and "Defendant's Bottle," are filed with the Bill.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

23 *Appearance.*

(Filed June 28, 1898.)

United States Circuit Court, Northern District of New York.

LA REPUBLIQUE FRANCAISE ET AL., Complainants,
vs.
SARATOGA VICHY SPRING COMPANY, Defendant.

The clerk of this court will please enter my appearance as solicitor and of counsel for the above-named defendant Saratoga Vichy Spring Company.

Dated June 27, 1898.

EDGAR T. BRACKETT,
Solicitor and of Counsel for the Defendant,
Saratoga Vichy Spring Co., Saratoga Springs, New York.

24 In the Circuit Court of the United States for the Northern District of New York.

Present: The Honorable William J. Wallace, judge.

JUNE 28, 1898.

LA REPUBLIQUE FRANCAISE and LA COMPAGNE Fermiere de L'Etablissement Thermal de Vichy
vs.
SARATOGA VICHY SPRING COMPANY.
In Equity. No. 6656.

On filing præcipe in this cause and on motion of Edgar T. Brackett,

Ordered, that his appearance as solicitor for the defendant herein be, and the same is hereby, entered, and that this cause be now docketed for said defendant.

25 *Answer.*

(Filed September 1, 1898.)

Circuit Court of the United States, Northern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Etablissement Thermal de Vichy, Complainants,
against
SARATOGA VICHY SPRING COMPANY, Defendant.

The answer of The Saratoga Vichy Spring Company, defendant, to the bill of complaint of La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, complainants.

The defendant, now and at all times hereafter, saving and reserving to itself all and all manner of benefit and advantage of exception to

the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much — such parts thereof as this defendant is advised is material for *him* to make answer unto, answers and says:

First. It denies on information and belief each and every allegation contained in paragraphs numbered one and two and in paragraphs numbered four to eighteen inclusive, of the bill of complaint.

26 Second. It denies that the complainant La Compagnie Fermiere de l'Etablissement Thermal de Vichy is a corporation organized and existing under and by virtue of the laws of the State of France; denies also that the matter in dispute in suit, exclusive of interests and costs, exceeds the sum or value of two thousand dollars, and denies specifically that the complainants are, or either of them is, in any manner whatsoever, entitled to the exclusive use of the term "Vichy" on, or in connection with, mineral water, or any designation or description of the same.

The defendant further denies that the complainants are, or either of them is, entitled to be protected in the exclusive use of the word Vichy as a trade name or as a commercial name or otherwise by virtue of any treaties existing between the Republic of France and the United States, and particularly the treaty concluded at Paris on the 20th day of March, 1883, and proclaimed by the President of the United States on the 11th day of June, 1887.

Third. Respecting the 17th paragraph of the bill of complaint, the defendant particularly answering, denies that it has at Saratoga, or elsewhere, now or at any time, fraudulently or unlawfully made use, directly or indirectly, of the complainant's alleged trade name "Vichy," to designate waters drawn by it, as alleged; denies that it has falsely or fraudulently made use of the word Vichy as a part of its corporate name, or by means of labels, show-cards, or in any other way as alleged; denies that it has falsely or fraudulently made use of the name "Vichy" or of the complainant's alleged bottle or label; it denies that the bottle or label of the defendant was willfully or fraudulently made by the defendant to resemble the alleged bottle or label of the complainant, or for the purpose of misleading or deceiving the public or enabling the sale of the defendant's water as or for the alleged water of the complainants; it denies that any person or persons have been deceived or misled by the use of the de-

27 fendant's bottle and label; it denies that the complainants have sustained any loss or injury whatsoever by reason of the alleged facts of the bill of complaint.

Fourth. Respecting the 18th paragraph of the bill of complaint, the defendant particularly answering, denies that it has made use of the word "Vichy" by means of labels, show-cards, price-lists, circulars or otherwise, for the purpose or object of causing its waters to be known on the market or purchased or sold as the "Vichy," or "Vichy water" of the complainants; denies that the defendant's use of the word "Vichy" constitutes a violation or infringement of the complainant's rights or is inequitable or fraudulent, or constitutes an unfair or inequitable competition, or tends to enable or promote the

sale of the defendant's water as and for the water of the complainants; it denies that the public have been or are misled to the loss and injury of the profits alleged to belong to the complainants or otherwise, or the alleged good will of the complainants; it denies that the good will of the complainant's business is of the value of ten thousand dollars or of any value whatever, and it denies that ten thousand dollars or any sum whatever has been diverted to the defendant fraudulently or otherwise.

Fifth. This defendant further answering the said bill of complaint says that there is no such place as the "city of Saratoga" in the State of New York; and on the contrary, alleges that the defendant's said mineral spring is located in the town of Saratoga Springs, county of Saratoga, and State of New York; that natural mineral springs have existed in and near the immediate vicinity of the village of Saratoga Springs, commonly known by the name Saratoga, and within the said town of Saratoga Springs, from time out of mind; that the said waters were first visited by the white men in August, 1767, when Sir
28 William Johnson was escorted to the healing waters of the celebrated High Rock spring by the Mohawk Indians, prior to which time the said springs were resorted to by innumerable wild beasts and savages, attracted by the saline properties of the waters. That the reputation and medical properties of the said waters early became known throughout the civilized world, and prior to and at the time of the formation of Saratoga county, in 1791, the waters of the various springs existing at Saratoga had become universally known as Saratoga waters, and Saratoga Spring waters, and from that date down to the present time the name "Saratoga" in association with mineral waters has had the accepted meaning throughout the world of mineral waters from some of the springs at Saratoga Springs, New York.

That there have existed at Saratoga from time immemorial, a large number and variety of mineral springs, and new springs are being continually found, all of which are known as Saratoga waters, but are particularly distinguished by names such as Hathorn water, Congress water, High Rock water, Saratoga Carlsbad water, Saratoga Vichy water, and many others, but all depending on their reputation upon their being waters from Saratoga, or Saratoga waters.

That the said Saratoga has become the world's most famous watering place, being visited yearly by thousands of people from all parts of the world, and the waters of said springs are shipped to, and are commercially known throughout the world, so much so that the word "Saratoga" has become and for more than a hundred years has been, the most valuable part of the name of the various waters.

Sixth. This defendant further answering the said bill of complaint, says, that its said spring was discovered in or about the year 1876, and was then given the name of the "Saratoga Vichy spring;" that thereupon application was made by the defendant to the United
29 States Government for a trade-mark entitling the defendant to the exclusive use of said name, Saratoga Vichy Spring Company, and such proceedings were thereupon duly had that, on or about the 8th day of May, 1877, such trade-mark, Saratoga Vichy

Spring Company, was duly registered by the United States, and thereupon the defendant obtained, and has ever since had, the right to the exclusive use of said name, Saratoga Vichy Spring Company, and has ever since made use of and enjoyed the same.

Further answering, this defendant says that it, the defendant, was duly incorporated by and under the laws of the State of New York, under the corporate style of "The Saratoga Vichy Spring Company," and with the object of the bottling and sale of mineral waters, on the 21st day of July, 1876.

That immediately upon the incorporation of the defendant in 1876, the defendant entered upon the business of bottling and selling the water from its said "Saratoga Vichy spring," and has continued to bottle and sell the said water down to the present time as "Saratoga Vichy water," as it had a lawful right to do, and has acquired a valuable reputation for its said water under the said name and style of "Saratoga Vichy," and "Saratoga Vichy water." That such use of the name "Saratoga Vichy" and Saratoga Vichy water" has been continued by the defendant down to the present time, a period of over twenty-two years without objection on the part of the complainants or any one else.

Seventh. This defendant, further answering said bill of complaint, says that for more than fifty years last past and prior to the incorporation of this defendant, mineral water has been sold throughout the civilized countries of the world under the name of "Vichy," either alone or incorporated with other names, and that such sale by others prior to the business of the defendant had and ever since has been recognized as, and was and is lawful and permitted to be openly and notoriously carried on in this and other countries, and said name "Vichy" has come to denote a type of water—to wit, an alkaline, non-cathartic, carbonated water—and does not stand for or exclusively denominate water from any one spring in the world.

Eighth. And this defendant, further answering the said bill of complaint, says that even in the State of France it has been and still is lawful to sell mineral water, both natural and artificial, under the name of "Vichy," and that such waters are being lawfully bottled and sold in France, though not the property of the complainants herein.

Ninth. And this defendant, further answering the said bill of complaint, says that it never has sold Vichy water as or for the Vichy water of the complainants, nor in resemblance thereto, but that all its water is in proper manner labeled and marked, so that the purchaser shall know that the goods sold by this defendant is the natural mineral water of Saratoga. That upon all of the defendant's labels, brands, price-lists and advertising matter the name "Saratoga" has appeared in connection with the name "Vichy" as designating its said water, and that the said name "Saratoga" has been as prominently displayed as the name "Vichy." That the defendant's acts in regard to the sale of its said water have been open, honorable and lawful and in harmony with the universal custom recognized by law as right and proper in all civilized communities,

and that this defendant has not done, or permitted to be done, any act that can be construed as injurious to the rights of the complainants, if any they possess.

Tenth. This defendant, further answering, says that the complainant La Compagnie Fermiere de l'Etablissement Thermal de Vichy in 1877—to wit, on the 7th day of August, 1877—registered in the Patent Office of the United States as their lawful trade-mark
31 those parts of the labels used by the complainants on their bottles of natural Vichy water which are the property of the said complainants, which registration is known as certificate No. 9,014, and to which, for greater certainty, this defendant craves leave to refer; and this defendant shows that by said registration the said complainant La Compagnie Fermiere de l'Etablissement Thermal de Vichy claimed as its trade-mark or property all it had a right to claim—to wit, the picture of some building—and that it cannot in view of its sworn declaration of exclusive ownership accompanying said registration, be now heard to allege that the Republic of France has any title of ownership in any of said matters as registered or presented for registration.

Eleventh. And this defendant, further answering, says that the term "Vichy" is being largely used at this time, to the knowledge of the complainants, in connection with natural mineral waters not obtained from or through the complainants, and also on artificial mineral waters of many manufacturers and druggists all over this and other countries, and is lawfully so used and notoriously, and no effort has been made to suppress such use, and that the complainants have at all times admitted the right of these several manufacturers and others to the use of the term "Vichy" on such artificial and natural products.

Twelfth. And this defendant, further answering, says that natural mineral water bottled from springs in and near Vichy and imported from France is sold in this country as Vichy water, to the knowledge of the complainants, and is nevertheless not water to which either of the complainants at any time ever had claim of ownership and that therefore the complainants are not the sole owners of the term "Vichy" as applied to mineral waters.

32 Thirteenth. This defendant further answering the said bill of complaint says: That the said water bottled and sold by it has been for over twenty-two years last past and now is being put up in bottles with labels of a distinct and peculiar character, differing in all respects from the bottles and labels used by the complainants in connection with their sale of their so-called natural Vichy water and that the distinction between said bottles and the labels of the complainants and the bottles and labels of this defendant is so marked and noticeable that the public and those who deal in such waters have never been and cannot be deceived into the belief that the product sold by the one is or may be the product of the other and that it has been always understood by the trade, medical profession and the public, that the water sold by this defendant is one of the natural waters of Saratoga and that the same are known and dis-

tinguished by defendant's trade-mark affixed to the labels accompanying the bottles containing said natural mineral water.

Fourteenth. The defendant further answering the bill of complaint says that the cause of action alleged in the said bill of complaint did not accrue to the plaintiffs or either of them within twenty years prior to the commencement of this action and is, therefore, barred by reason of lapse of time and is stale and the court will not entertain the same.

Fifteenth. The defendant further answering the bill of complaint says that the cause of action alleged in the said bill of complaint did not accrue to the plaintiffs or either of them within ten years prior to the commencement of this action and is, therefore, barred by reason of lapse of time and is stale and the court will not entertain the same.

Sixteenth. The defendant further answering the bill of complaint says that there is a misjoinder of parties plaintiff, viz.: La Republique Francaise and La Compagnie Fermiere de l'Etablisse-
33 ment Thermal de Vichy; that the said plaintiff La Republique Francaise has no interest in the matter alleged in the said bill of complaint.

Seventeenth. The defendant further answering said bill of complaint says that the complainants have and each of them has an adequate remedy at law for any damages sustained by them, if any.

Eighteenth. As to each and every allegation in the bill of complaint contained, not hereinbefore denied, the defendant denies any knowledge or information thereof sufficient to form a belief.

Wherefore, the defendant prays that the complainants' bill be wholly dismissed on the merits with costs to this defendant.

EDGAR T. BRACKETT,
Solicitor for Defendant, Town Hall, Saratoga Springs, N. Y.

SARATOGA COUNTY, *ss*:

Lewis W. James, being duly sworn, says that he is the vice-president of the defendant; that he has read the foregoing answer; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

LEWIS W. JAMES.

Subscribed and sworn to before me this 31st day of August, 1898.

[L. S.]

JOHN H. BENEDICT,
Notary Public.

34 *Replication.*

Filed September 27, 1898.

United States Circuit Court, Northern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Etablissement Thermal de Vichy, Complainants,
vs.
SARATOGA VICHY SPRING COMPANY, Defendant.

The replication of La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, complainants, to the answer of The Saratoga Vichy Spring Company, defendant.

These repliants, saving and reserving unto themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain and prove their said bill of complaint to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants. Without this: that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto and not herein and
35 hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

ROWLAND COX,
Complainants' Solicitor.

36 *Order Amending Bill.*

At a stated term of the circuit court of the United States for the northern district of New York, in the second circuit, held at the United States court-house in the city of Utica, in said district, on the 9th day of June, 1899.

Present: Hon. Alfred C. Coxe, district judge, holding circuit court.

LA REPUBLIQUE FRANCAISE ET AL.
vs.
SARATOGA VICHY SPRING COMPANY. } In Equity.

Upon reading and filing the annexed consent and upon motion of Rowland Cox, solicitor for complainant, it is

Ordered that the bill of complaint in this cause be, and the same hereby is, amended, *nunc pro tunc*, by inserting, to precede the paragraph numbered 17 on page 11, the following:

And your orators further allege that they are entitled to be protected in the exclusive use of the word "Vichy" as a trade name and as a commercial name and otherwise, by virtue of the treaties at present existing and in force between the Republic of France and the United States, and particularly the treaty between the United States and France and other nations, concluded at Paris
37 on the 20th day of March, 1883, and proclaimed by the President of the United States on the 11th day of June, 1887, the eighth article of which treaty is as follows, to wit:

"ARTICLE VIII.

"The commercial name shall be protected in all the countries of the Union without obligation of deposit, whether it forms part or not of a trade or commercial mark."

(Signed) ALFRED C. COXE.

We assent to the entry of the foregoing order.

ROWLAND COX,
Solicitor for Complainants.
EDGAR T. BRACKETT,
Solicitor for Defendant.

38 *Order Amending Answer.*

At a stated term of the circuit court of the United States for the northern district of New York, in the second circuit, held at the United States court-house, in the city of Utica in said district, on the 4th day of November, 1899.

Present: Hon. Alfred C. Coxe, district judge.

LA REPUBLIQUE FRANCAISE ET AL.
against
SARATOGA VICHY SPRING COMPANY. } In Equity.

Upon reading and filing the annexed consent, and upon motion of Edgar T. Brackett, solicitor for the defendant, it is

Ordered, that the answer in the cause be, and the same hereby is, amended *nunc pro tunc* by inserting to precede the paragraph third on page 2, the following:

"The defendant further denies that the complainants are, or either "of them is, entitled to be protected in the exclusive use of the word "Vichy as a trade name or as a commercial name or otherwise by "virtue of any treaties existing between the Republic of France and "the United States, and particularly the treaty concluded at Paris "on the 20th day of March, 1883, and proclaimed by the President "of the United States on the 11th day of June, 1887."

ALFRED C. COXE, *Judge.*

We assent to the taking and entry of the foregoing order.

EDGAR F. BRACKETT,
Solicitor for Defendant.
ROWLAND COX,
Solicitor for Complainants.

39 *Stipulation.*

Filed February 11, 1899.

United States Circuit Court, Northern District of New York.

La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, Complainants, *against* Saratoga Vichy Spring Company, Defendant.	In Equity.

It is hereby stipulated and agreed by and between the counsel for the respective parties that either party may read on the trial herein any depositions, either on the direct or cross examination, taken in the action of the above-named complainants against Louisa Schultz, executrix, &c., pending in the United States circuit court for the southern district of New York, which depositions are now on file in the office of the clerk of the United States circuit court for the southern district of New York, to be used with the same force and effect, and subject to all the objections by either party, as if the same had been regularly taken and offered in evidence by the party reading the same in the action hereinabove entitled.

Dated February 9th, 1899.

ROWLAND COX,
Solicitor for Complainants.
EDGAR T. BRACKETT,
Solicitor for Defendant.

40 United States Circuit Court, Northern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Establissement Thermal de Vichy, Complainants,
against
SARATOGA VICHY SPRING COMPANY, Defendant.

Testimony on behalf of the complainant-, taken before John A. Shields, Esq., clerk of the United States circuit court for the southern district of New York and United States commissioner, at the office of Rowland Cox, Esq., No. 229 Broadway, New York city, on Friday, March 24, 1899, at 10.30 a. m.

Appearances.

Rowland Cox, Esq., counsel for complainants.
Edgar T. Brackett and W. P. Butler, for defendant.

It is agreed by counsel that the testimony about to be taken on behalf of the complainants herein may be taken orally and stenographically, and be proceeded with as of this date, and be continued with from day to day as may be agreed by counsel or otherwise; such testimony to be taken before John A. Shields, Esq., clerk of the United States circuit court for the southern district of New York and United States commissioner, to be by him certified, and
41 the same to have, in all things, the force and effect of testimony taken before a standing examiner of this court, in pursuance of the rules of this court. Sufficient notice is hereby admitted of the taking of testimony, the same as if formal notice had been regularly served in pursuance of the rules.

It is agreed between counsel that the right of cross-examination and the right of objection is reserved to defendant's counsel; complainants' counsel hereby agreeing to produce the witness or witnesses for cross-examination; and that any and all objections may be noted by defendant's counsel and the testimony taken today, except the matters and things which are the subject of an agreement between counsel, the objection to be noted at any time before the first day of July, 1899.

Mr. Cox: Complainants' counsel states that it having been stipulated and agreed by and between counsel for the respective parties that either party may read, on the trial herein, any depositions taken in the action of the complainants in this cause against Louise Schultz executrix and so forth, in the United States circuit court for the southern district of New York, which depositions are now on file in the office of the clerk of the United States circuit court for the southern district of New York, with the same force and effect and subject to the objections by either party as if the same had been regularly taken and offered in evidence by the party reading the same; and complainants' counsel now gives notice that he will read and use in this cause the following depositions taken in the said action, in which this complainant is the complainant and Louise Schultz, executrix is defendant: Louis

Charles Marie Aguillon, Edward Bonjean, Charles Pierre de
42 Maraffy, Count de Maillard, Emile Gilbert Dietze, Charles Louis Fere, Edward Jeramie, Eugene Pouillet, Ernest Ellsworth Smith.

It is understood that the complete depositions, including all of the exhibits referred to by the witnesses, are offered in pursuance of the stipulation between counsel above referred to.

It is stipulated and agreed by counsel as follows:

That the spring of the defendant was discovered in the year 1872 and the defendant was incorporated under the laws of the State of New York by the name "The Saratoga Vichy Spring Company" on the 21st day of July, 1876.

That no labels of any kind were used by the defendant on its bottles prior to in or about 1884.

That in or about the year 1884 the defendant caused to be designed a label, of which the label produced herewith, marked "Complainants' Exhibit Defendant's First Label, J. A. S., commissioner," is a specimen, except that the label was of white paper, the printed matter all being in black.

That in or about the year 1884 the defendant began to use bottles like the bottle produced herewith, marked "Complainants' Exhibit Defendant's Second Bottle, J. A. S., com'r," prior to which time the defendant had used bottles which differed in shape from defendant's second bottle aforesaid, the first bottle used by the defendant being one which consisted of a cylindrical body and long, narrow neck, the shoulder of the bottle approaching more nearly to a rectangular shape than defendant's second bottle; and defendant's counsel agrees to produce a specimen of defendant's first bottle, the same to be offered in evidence and marked "Complainants' Exhibit Defendant's First Bottle." The bottles first used by the complainant- were availed of without the use of labels of any kind; the words
43 "Saratoga Vichy springs" or "Saratoga Vichy Spring Company" being blown in the bottle, together with a monogram consisting of the letters V. S.

That labels like Complainants' Exhibit Defendant's First Label, except that they were white as hereinbefore stated, were used by the defendant for some time when labels like the labels produced herewith marked "Complainants' Exhibit Defendant's Second Label, J. A. S., com'r," and which is offered in evidence by complainants' counsel, were devised, which were used until about 1896 in connection with bottles like "Complainants' Exhibit Defendant's Second Bottle," the labels and bottles being of three different sizes, quarts, pints and half pints, and the labels being adapted to the size of the bottle. In 1896 the defendant caused to be devised and made use of labels like the labels produced here and marked "Complainants' Exhibit Defendant's Third Label A, J. A. S., com'r," and "Complainants' Exhibit Defendant's Third Label B, J. A. S., com'r," the former being availed of as a label for the body of the bottle and the latter as a neck label, and which were applied and used in connection with a bottle like a bottle to which the said labels thus marked are applied, and which bottle, together with the two labels

marked as aforesaid, are offered in evidence by complainants' counsel, the bottle being marked "Complainants' Exhibit Defendant's Third Bottle, J. A. S., com'r"

It is further agreed that the circular produced herewith marked "Complainants' Exhibit Defendant's Circular A, J. A. S., com'r," and which is offered in evidence by complainant's counsel, was published, distributed and used by the defendant prior to the year 1896 and thereafter, and that the circular produced herewith
44 marked "Complainants' Exhibit Defendant's Circular B, J. A. S., com'r," was published, distributed and used by the defendant after the year 1896; that different editions of the circulars like Complainants' Exhibit Defendant's Circular B have been published by the defendant from time to time, the difference in the editions consisting in the prices and other details, but which did not materially change the character of the circular in any particular.

WILLIAM H. DAVIS, called on behalf of the complainant-, being duly sworn, testified as follows:

By Mr. COX:

Q. 1. Please state your name, age, residence and occupation?

A. William H. Davis; age, 18; residence, 207 East Ninety-fourth street; clerk.

Q. 2. In whose office?

A. In the office of Rowland Cox.

Q. 3. How long have you been in my office?

A. Three years.

Q. 4. Please look at the three bottles I now show you and state whether they were purchased by you, and, if so, give the circumstances connected with the purchase?

A. Yes, sir; they were purchased by me. I went into the store of Acker, Merrall & Condit and handed to the gentleman behind the counter this slip of paper (indicating slip of paper).

Q. 6. Please read the slip of paper?

A. "Please send by the bearer two pint bottles of Vichy at once."

Q. 7. When was it that you took this slip of paper and to whom did you deliver it?

A. I think it was in October; I am not sure though.

Q. 8. October——

A. Eighteen ninety-eight.

45 Q. 9. You say you delivered the slip of paper to the person behind the counter. Where was it that you made the application for water?

A. Acker, Merrall & Condit.

Q. 10. Their place of business is where?

A. On the corner of Chambers and West Broadway.

Q. 11. Now please state what took place? You handed the slip of paper to the gentleman behind the counter; and what did you say?

A. I didn't say anything; I just handed him the slip.

Q. 12. Then what did he say, if anything?

A. He walked over to the elevator and called downstairs for them to send up two pint bottles of Vichy.

Q. 13. Then what happened?

A. Then he handed them up and he wrapped them up and gave them to me.

Q. 14. Did he say anything in explanation?

A. No, sir.

Q. 15. He simply gave you the two bottles without saying anything?

A. Yes, sir.

Q. 16. And you accepted them and what did you do with them?

A. I brought them to the office of Rowland Cox.

It is agreed by counsel that the two bottles of water referred to by the witness are pint bottles of the defendant's water contained in a bottle like Complainants' Exhibit Defendant's Third Bottle, bearing labels like Complainants' Exhibit Defendant's Third Label A, and Complainants' Exhibit Defendant's Third Label B.

Q. 17. Please look at the slip of paper bearing the words "Please send by bearer two pint bottles of Vichy at once," and state whether it bears any mark which enables you to identify it as the piece of paper which you took to Acker, Merrall & Condit?

A. My initials are on the top of the paper.

46 Q. 18. Do you mean to say that you brought the slip of paper back to my office?

A. Yes, sir.

Q. 19. And you put your initials on it so that you could identify it?

A. Yes, sir.

Q. 20. Are you able to identify the two bottles to which you have referred, and the labels on them by any mark which was made upon the labels?

A. By my initials.

Q. 21. Your initials were put upon the bottles for the purpose of identifying them, were they not?

A. Yes, sir.

Q. 22. And the bottles which you have referred to you are sure were the bottles which were delivered to you at Acker, Merrall & Condit's at the time you went there, as you have stated?

A. Yes, sir.

Cross-examination reserved.

It is further agreed by counsel that the translations which were used and availed of in connection with the action of these complainants against Louisa Schultz, executrix, may be offered in evidence and used and availed of in this case the same as the originals; and complainants' counsel hereby offers in evidence, to be used on the hearing as aforesaid, all the translations offered in connection with all of the depositions and exhibits in said case offered and used in connection with the depositions which have been offered in evidence.

It is further agreed by counsel that the advertisement produced

and marked "Complainants' Exhibit Defendant's Advertisement, J. A. S. com'r," is an advertisement which was inserted by the defendant in a trade publication known as "The Epicure," before the filing of the bill of complaint in this cause; the said advertisement being a clipping from the said trade publication showing the exact manner in which the advertisement appeared.

47 It is agreed by counsel that the complainant and its predecessors have used only one kind or style of bottle, and that the bottle produced herewith and marked "Compt. Exhibit Complainants' Bottle, J. A. S., com.," is a specimen of the kind and style of bottle which has been used continuously by the complainant and its predecessors since prior to the year 1853.

Complainants' counsel offers in evidence a label which is marked "Complainants' Exhibit Complainants' Label, J. A. S., com.," which is a specimen and example of the form and style of label used by the complainant and its predecessor since prior to the year 1853, the label being attached to bottles like that offered in evidence and marked "Complainants' Bottle."

It is agreed that the printed matter appearing on the label thus used on complainants' product has been varied, but the label has always been white with printed matter in black (except the words "*Propriete Controle de L'Etat*," which have appeared in pale ink in light blue or purple), and of the size and shape of the label marked "Complainants' Exhibit Complainants' Label."

Adjourned to notice.

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63 *Notice.*

United States Circuit Court for the Northern District of New York.

LA REPUBLIQUE FRANCAISE ET AL.
vs.
SARATOGA VICHY SPRING COMPANY. } In Equity.

Defendant's counsel gives notice that pursuant to stipulation between counsel he will read and use in this cause the cross-examination of the complainants' witnesses as printed in the complainants' record in the action of these complainants against Louise Schultz, executrix, &c.; also the testimony of all the witnesses, together with the exhibits on behalf of the said Louise Schultz, executrix, &c., as printed in the defendant's record in said action, and that he will avail himself of all objections and exceptions taken on behalf of the said Louise Schultz, executrix, &c., in said action.

EDGAR T. BRACKETT,
Defendant's Counsel.

64 *Stipulation.*

United States Circuit Court, Northern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERmiere de l'Etablissement Thermal de Vichy, Complainant-,
vs.
SARATOGA VICHY SPRING COMPANY, Defendant. } In Equity.

It is hereby agreed and stipulated upon request of counsel for defendant, by and between the solicitors for the respective parties to this cause as follows:

1. That the cross-examination of the witnesses Louis Charles Marie Aguillon, Edward Bonjean, Charles Pierre de Marafy, Count de Maillard, Emile Gilbert Deitz, Charles Louis Fere, Edward Jeramie, Eugene Pouillet and Ernest Ellsworth Smith, whose depositions have been taken and read in evidence on behalf of the plaintiffs, be considered as read in evidence herein on the part of the defendant, it being understood and agreed that the translations as printed in the complainants' record in the action of these complainants against Louise Schultz, executrix, &c., may be read and used the same as the originals.

2. That the testimony of all the witnesses, together with all of the exhibits on behalf of Louise Schultz as executrix, &c., in the action in the United States circuit court for the southern district of
65 New York, wherein these complainants were complainants, and the said Louise Schultz, as executrix, &c., was defendant, as printed in the defendant's record therein, may be offered and used n evidence, and in all matters and proceedings herein with the ame force and effect as if said witnesses had been regularly pro-

duced and testified thereto, and as if said original exhibits had been offered and received.

3. That all the objections and exceptions taken to the questions and exhibits in the depositions in the action of these complainants against Louise Schultz, executrix, &c., read in evidence herein on the part of the complainants, be considered as taken by the defendant to the same questions and exhibits as read herein.

ROWLAND COX,
Complainants' Solicitor.
EDGAR T. BRACKETT,
Defendant's Solicitor.

66 *Stipulation.*

United States Circuit Court, Northern District of New York.

LA REPUBLIQUE FRANCAISE ET AL.
vs.
SARATOGA VICHY SPRING COMPANY.

Upon request of counsel for the defendant it is hereby stipulated and agreed that if Lewis A. James and Emmett Carragan were called as witnesses on behalf of the defendant they would say that they are officers of the corporation defendant and have been since about the time of its incorporation and have had a knowledge of its affairs, and that they would testify, each for himself, as follows:

That the spring of the defendant was discovered in March, 1872, on the farm of Mr. E. A. Deuel, in Saratoga Springs, N. Y. It was found by boring in the rock to the depth of 180 feet. At first during development the spring was called "Aetna."

Soon after such discovery the water of the spring was analyzed by Prof. C. F. Chandler, of Columbia College School of Mines, of New York city. The following is the analysis of one U. S. gallon of 231 cubic inches:

Chloride of sodium	128.689
Chloride of potassium	14.113
Bromide of sodium	0.990
Iodide of sodium	trace
Fluoride of calcium	trace
Bicarbonate of lithia	1.760
67 Bicarbonate of soda	82.873
Bicarbonate of magnesia	41.503
Bicarbonate of lime	95.522
Bicarbonate of strontia	trace
Bicarbonate of baryta	0.594
Bicarbonate of iron	0.052
Sulphate of potassa	trace
Phosphate of soda	trace
Biborate of soda	trace
Alumina	0.743
Silica	0.758
Organic matter	trace

Carbonic-acid gas in one gal. 383.071 cubic inches. Temperature, 50 degrees Fahre-heit.

That in September, 1873, the owners of the spring received the following letter:

"YONKERS, N. Y., *Sept.* 20, 1873.

"MY DEAR SIR: * * * I congratulate the Spg. Co. on change of name, or on the adoption of 'Vichy' as the distinctive cognomen. But 'American Vichy Spring Company of Saratoga' is too large. Why say 'American Vichy Spring Company' and add Saratoga? Everybody knows that Saratoga is in America, and why say 'Vichy spring?' We all know that vichy is only used in connection with spring whether expressed or implied. I would say 'The Saratoga vichy.' I have great faith that the waters will do me good.

"Yours truly, R. C. MUNYAN.

"D. Greenleaf, Esq."

That upon receipt of this letter the owners again considered a change of name and the adoption of a new style of bottle.

That the spring of defendant, when discovered, was a geyser or spouting spring, throwing its water to a considerable height by the force of its own natural gas.

68 That thereafter, in 1873, the name of the spring was changed to the "Saratoga vichy spouting spring of Saratoga Springs, N. Y.," and was extensively advertised throughout the United States.

That in the year 1873 a style of bottle was adopted. This bottle was of white glass in the side of which was blown the words "Saratoga vichy spouting spring, Saratoga, N. Y.," surrounding the letter "V" blown in the glass. There were three sizes of the bottle, quarts, pints and half pints.

The defendant offers in evidence one of each of said bottles, the same being marked as follows: "Defendant's Exhibit Defendant's First Bottle, in use from about 1873 to about 1867, and after. This bottle was not labelled."

These bottles were used from 1873 to 1876 and without labels.

That during the same period there was printed and circulated in connection with said water a circular, a copy of which is offered in evidence by the defendant, marked "Defendant's Exhibit Defendant's First Circular. In use from 1873 to 1876."

That on the 21st day of July, 1876, the defendant was incorporated under the laws of the State of New York as "The Saratoga Vichy Spring Company."

The defendant offers in evidence a certified copy of its charter or articles of incorporation, marked "Defendant's Exhibit Defendant's Articles of Incorporation, July 21, 1876."

That the defendant thereupon became the owner of the said spring property, and in or about the same year, 1876, the defendant changed the style of its bottle to a bottle of amber glass, on one side of which was blown the words, "Saratoga vichy water, Saratoga, N. Y.," and

in the opposite side of which was blown the letter "V." The bottles were of three sizes, quarts, pints and half pints, without labels.

The defendant offers in evidence one of each size of said bottles, the same being marked "Defendant's Exhibit Defendant's
69 Second Bottle. In use from 1876 to 1879. This bottle was without label."

That this bottle was in use from about 1876 to about 1879, and without label of any kind.

That during the same period the defendant printed and circulated, in connection with its said water, a circular, a copy of which is offered in evidence, by the defendant and marked "Defendant's Exhibit Defendan-'s Second Circular. In use from about 1876 to about 1879."

That on the 16th day of March, 1877, the defendant duly deposited in the United States Patent Office a certain trade-mark, together with the required statement and declaration under oath, which trade-mark was duly registered on the 8th day of May, 1877.

The defendant offers in evidence a certified copy of said trade-mark, statement and declaration; marked "Defendant's Exhibit Defendant's Trade-mark, Statement and Declaration."

That from about the year 1879 or 1880 to about 1888 the defendant printed and circulated, in connection with its said water, a circular, a copy of which is offered in evidence by the defendant, and marked "Defendant's Exhibit Defendant's Third Circular. In use from about 1880 to about 1888."

That in about the year 1885 the defendant again changed the style of its bottle to a bottle of amber glass, having its sides plain and with the letter "S" blown in the bottom; this bottle was labeled with a label of white paper printed in black letters extending part way around the bottle. There were three sizes of this bottle, quarts, pints and half pints. This bottle and label were in use from about 1885 to about 1887.

The defendant offers in evidence one of each size of said bottles and labels, with the exception that the sample labels offered are colored, the defendant being unable to procure any of the white labels. Said bottles are marked "Defendant's Exhibit, Defendant's Third Bottle and Label (except label in use was white), De-
70 fendant's First Labelled Bottle. In use from about 1885 to 1887."

That in or about the year 1888 the defendant again changed the style of its bottle label to a label of white paper, printed in black letters and extending entirely around the bottle. This label was used on three sizes of bottle, quart, pint and half pint, and was used by the defendant from about the year 1888 to about the year 1896.

The defendant offers in evidence one of each size of said bottles and labels marked "Defendant's Exhibit, Defendant's 4th Bottle and Label. Defendant's Second Labelled Bottle, Used from About 1888 to About 1896."

That in or about the same year, 1888, the defendant printed and circulated in connection with said water a circular, a copy of which

was offered in evidence by the defendant and marked "Defendant's Exhibit Defendant's 4th Circular, in Use from About 1888 to About 1892," which circular was so used by the defendant from about the year 1888 to about the year 1892.

That in or about the year 1892 and from then to the year 1896 the defendant printed and circulated in connection with its said water a circular, a copy of which is offered in evidence by the defendant and marked "Defendant's Exhibit, Defendant's 5th Circular, in Use from About 1892 to About 1896."

That in or about 1896 the defendant again changed the style of its bottle to a bottle of green glass, generally recognized as the Appollinaris bottle. This bottle was without imprint of any kind. At the same time the defendant changed the style of its label to an oval label of white paper printed in red and black letters, which was affixed to one side of the bottle, and at the same time the defendant adopted a neck label for its said bottle, of white paper printed in red and black letters. These bottles were of two sizes, quarts and pints. For half pints the defendant used the same bottles as Defendant's Exhibit, Defendant's 4th Half-pint Bottle, with said oval label on the side, but with the neck label omitted therefrom.

71 The defendant offers in evidence one of each size of said bottles and labels, marked "Defendant's Exhibit Defendant's 5th Bottle and Label. Defendant's 3rd Labeled Bottle, in Use from About 1896 to Date."

This style of bottle and label has been used continuously by the defendant from the time of its adoption in 1896 to the present time, and is the present style of defendant's bottle and label. But it is admitted, upon request of complainant's counsel, that defendant until very recently sold its water in bottles like "Defendant's Exhibit 4th Bottle and Label, Defendant's Second Labeled Bottle Used from About 1888 to About 1896," and that its water put up in that way prior to 1896 was on sale in the city of New York and was at the time the bill was filed.

In the same year, 1896, the defendant printed and circulated in connection with its said water a circular, a copy of which is offered in evidence by the defendant and marked "Defendant's Exhibit Defendant's 6th Circular, in Use from About 1896 to Date." This circular has been used by the defendant from the date of its adoption to the present time, and is the present circular used by the defendant.

That the complainant has never sold its water in the United States in half-pint bottles or in pint bottles until the year 1898, or about that time.

That neither the defendant, its predecessors or either of them, in the adoption and use of the word "vichy" in connection with its said water, intended thereby to defraud the plaintiffs or deceive the public.

That neither the defendant, its predecessors or either of them, has ever sold its said water as or for the vichy water of the complainants, nor in resemblance thereto, but that all its water was and is in proper manner labeled and marked so that the purchaser shall know

that the goods sold by this defendant is the natural mineral water of Saratoga, and not the water of the complainants.

72 That upon all the defendant's bottles, brands, price-lists and advertising matter the name "Saratoga" and other words designating the location of its said spring and water as of Saratoga, N. Y., has appeared in connection with the name "Vichy" as designating its said water, and that the said name "Saratoga" and others have been as prominently displayed as the name "Vichy."

That the water of the defendant is highly charged with natural carbonic-acid gas, and is bottled under a high pressure of said gas to such an amount that on opening the bottle the gas is apparent to the most careless person, while the water of the plaintiffs is known as a still water—that is, it is not a charged water.

The defendant offers in evidence six of its bottles, labeled and filled; also six bottles purporting to be complainants' water purchased in the open market; said exhibits being marked "Defendant's Exhibit, Bottles Labeled and Filled."

Complainants' counsel objects to the testimony as to the intention of the defendant and its predecessors as incompetent, immaterial and irrelevant.

Complainants' counsel also objects to the testimony that the defendant and its predecessors have never sold their water as or for the "vichy" water of the complainants nor in resemblance thereto, and that all its water has been properly labeled and marked, so that the purchaser shall know it; on the ground that such testimony is incompetent as stating a conclusion, and as an expression of opinion by the witnesses concerning a question which can only be decided by the court, and because the testimony is secondary and incompetent, the only competent evidence being the labels, circulars, &c., used by the defendant, which show what was done by the defendant and its predecessors.

73 Complainants' counsel also objects to all other testimony of the witnesses which states conclusions as to the labels, circulars, &c., of the defendant for reasons just stated, and particularly because the only competent evidence is the labels and circulars themselves which have been offered in evidence and are before the court.

It is agreed by counsel that this stipulation shall have the same force and effect as if the said Lewis A. James and Emmett Corragan had been called as witnesses and had testified as hereinbefore recited and set forth subject to the objections noted on behalf of the complainants.

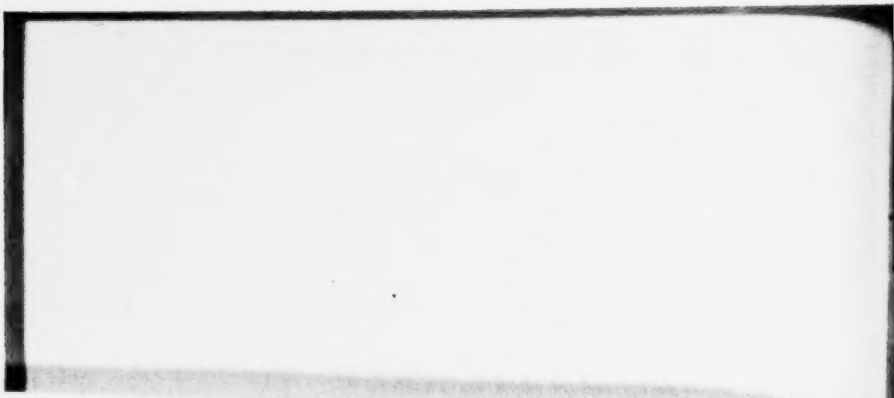
Dated October 20, 1899.

EDGAR T. BRACKETT,
Solicitor for Defendant.
ROWLAND COX,
Solicitor for Complainants.

75

Defendant's Exhibit Defendant's First Bottle.

This exhibit consists of three bottles without labels, quart, pint and half-pint sizes, being specimens of the style of bottles used by defendant from 1873 to 1876 without labels.



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79 STATE OF NEW YORK, } ss:
City and County of New York,

We, the undersigned, Victor Vuillaume, of the city of New York, and David C. Denel, of Saratoga Springs, State of New York; Samuel Munn, of New York city; A. G. Munn & G. H. Tuttle, of same place, do by these presents, pursuant to and in conformity to the acts of the legislature of the State of New York, associate ourselves together and form a body politic and corporate, and do hereby certify:

First. That the corporate name of the said company is "The Saratoga Vichy Spring Company."

Second. That the object for which the said corporation is formed is for the production from the earth bottling and sale of mineral waters.

Third. That the capital stock of said corporation shall be fifty thousand dollars, which shall be divided into five hundred shares of one hundred dollars each.

Fourth. That the said corporation shall commence on the first day of May, 1876, and shall continue in existence for the term of fifty years.

Fifth. That the number of trustees of said corporation shall be five, whose names are as follows, and who shall manage the concerns of the said corporation for the first year:

Victor Vuillaume.....New York city, New York.
David C. Denel.....Saratoga Springs, New York.
Samuel Munn.....City of New York.
A. G. Munn.....City of New York.
G. H. Tuttle..... City of New York.

Sixth. That the names of the town and county in which the operations of said company are to be carried on are Saratoga and Saratoga Springs in the county of Saratoga, New York.

V. VUILLAUME.
D. C. DENEL.
SAMUEL MUNN.
GEORGE H. TULLE.
A. G. MUNN, JR.

80 CITY AND COUNTY OF NEW YORK, ss:

On the 23rd day of May, 1876, before me personally appeared Victor Muillaume, David C. Denel, Samuel Munn, George H. Tuttle and A. Goodwin Munn, Jr., to me well known to be the individuals described in and who executed the within instrument and severally acknowledged that they executed the same for the purposes therein mentioned.

[L. S.]

CHAS. G. CRONIN,
Notary Public, N. Y. Co.

STATE OF NEW YORK,
City and County of New York, } ss:

I, William Walsh, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Chas. G. Cronin, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn and duly authorized to take the same. And, further, that I am well acquainted with the handwriting of said notary, and verily believe that the signature to said certificate of proof or acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof, I have hereunto set my L. S. hand and affixed the seal of the said court and county the 21 day of July, 1876.

WM. WALSH, *Clerk.*

(Endorsed:) Filed July 21, 1876.

81

Defendant's Exhibit Defendant's Second Bottle.

This exhibit consists of three bottles without labels, quart, pint and half-pint sizes, being specimens of the style of bottle used without labels by defendant from 1876 to 1879.

88 **Defendant's Exhibit, Defendant's Trade-mark, Statement, and Declaration.**

United States Patent Office.

Saratoga Vichy Spring Company, of Saratoga Springs, New York.

Trade-mark for Mineral Water Known as Vichy.

Statement of trade-mark No. 4619, registered May 8, 1877; application filed March 16, 1877.

To all whom it may concern:

Be it known that the Saratoga Vichy Company (a corporation organized under the laws of the State of New York, and doing business at Saratoga Springs, in the county of Saratoga and State of New York) has adopted for its use a trade-mark for mineral waters known as "Vichy," of which the following specification is a full, clear, and exact description:

The said trade-mark, which is shown in the accompanying facsimile, consists, essentially of a monogram composed of the letters "V. S." and the words "The Saratoga," the latter being used in connection with the words "Natural Vichy Water." The words have generally been arranged above or below the monogram, the whole being inclosed within an ornamental border.

This trade-mark the said corporation has used in its business for six months last past.

89 The class of merchandise to which the trade-mark is appropriated is natural mineral waters, and the particular description of goods (comprised in said class) upon which said corporation intends to use its said trade-mark is natural Saratoga vichy water.

Said corporation has been accustomed to have its trade-mark printed and distributed with said waters, and the same, in raised letters, blown in the glass bottles in which said vichy water has been put up.

SARATOGA VICHY SPRING CO.,
By D. C. DUELL, *Secretary.*

Witnesses:

HOWARD EARLE.
ISAAC J. MACCABE.

90

TRADE-MARK.

SARATOGA VICHY SPRING CO.

MINERAL WATER KNOWN AS VICHY.

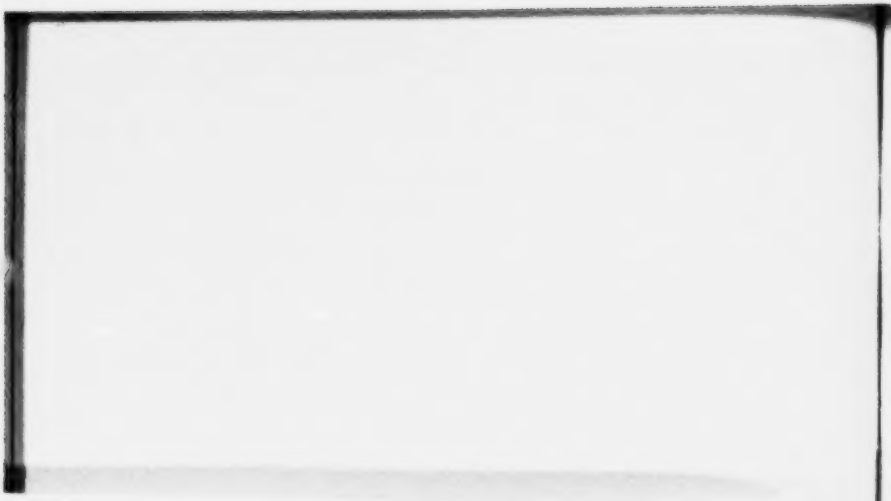
No. 4619.

Registered May 8, 1877.

91

Defendant's Exhibit Fourth Bottle and Label. Defendant's Second Labeled Bottle.

This exhibit consists of three bottles of quart, pint and half-pint sizes, being specimens of the style of bottle used by defendant from about 1888 to 1896. The following is a fac-simile of the label used upon these bottles, the label varying in size according to the style of bottle.



DOUT(S) IS/ARE TOO LARGE TO BE FILMED

102 [SEAL.] The President of the United States of America to Saratoga Vichy Spring Company, Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States for the northern district of New York, in the second circuit, on the first Monday in August, 1898, to answer to a bill of complaint exhibited against you in said court by La Republique Française and La Compagnie Fermiere de l'Etablissement Thermal de Vichy and to do further and receive whatever said court shall have considered in that behalf, and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, at the city of Utica, in said northern district, the twenty-seventh day of June, eighteen hundred and ninety-eight.

W. S. DOOLITTLE, *Clerk.*

ROWLAND COX,
Solicitor for Complainant.

MEMORANDUM.—The defendant is to enter his appearance in the suit above mentioned, in the clerk's office, at Utica, on or before the day at which the above subpœna is returnable, otherwise the bill may be taken *pro confesso.*

W. S. DOOLITTLE, *Clerk.*

(Endorsed:) No. 6656.—United States circuit court, northern district of New York.—La Republique Française *et al. v.* Saratoga Vichy Spring Company.—Equity subpœna.—Rowland Cox, complainants' solicitor.—Original Filed July 30, 1898.

103 United States Circuit Court, Northern District of New York.

LA REPUBLIQUE FRANÇAISE ET AL.
v.
SARATOGA VICHY SPRING COMPANY.

Final Hearing in Equity.

Rowland Cox, for the complainants.
Edgar T. Brackett and Walter P. Butler, for the defendant.

COXE, *J.:*

It is thought that this cause is ruled by the decision in La Republique Française *v.* Schultz, 94 Fed. Rep., 500, recently affirmed. Of course the facts are not alike. They never are. The salient features are, however, almost identical. The principles upon which the decision in the Schultz case rests are involved in the case at bar and I see no way to avoid their application. The attempt to distinguish, though ingenious, is founded upon considerations which

are too vague and unsubstantial for practical application. They do not go to the merits of the controversy. They make no breach in the principal line of defense. It would be inequitable to punish the defendant with an injunction and an accounting after exonerating the defendants in the former case. Indeed, the defense here is, in some respects, stronger than in the Schultz case.

104 The defendant's water has been known for twenty-six years as Saratoga vichy, and the record shows that there has never been an attempt to palm it off on innocent buyers as the imported article. The defendant has sold it upon its merits as a natural Saratoga water. The two are different in appearance, taste and ingredients. The defendant's is a sparkling water, and for several years has been sold under a label on which the word "Saratoga" is as prominently displayed as the word "vichy." It is true that there is a small neck label attached to the bottle on which the name "vichy" is the more prominent, but, in view of the many other distinguishing characteristics, it seems inconceivable that any one of ordinary perception can be induced to buy the defendant's water, supposing it to be the imported vichy. An individual stupid enough to be deceived in such circumstances is beyond the aid of a court of equity. In his case a writ *de lunatico* is a more appropriate remedy than a writ of injunction.

The bill is dismissed.

(Endorsed:) Decision, Coxe, *J.*—Filed Feb'y 19, 1900.

105 In the Circuit Court of the United States for the Northern District of New York.

La Republique Française and La Compagnie Fermiere de l'Etablissement Thermal de Vichy *ag'st* The Saratoga Vichy Spring Company.	In Equity. No. 6656.

This cause coming on to be heard at a term of this court, held at Utica, on the 12th day of December, 1899, and the court having considered the evidence and after hearing Rowland Cox, Esq., solicitor for the complainants, and Edgar T. Brackett, solicitor for the defendant, it is

Adjudged and decreed, that the bill herein be and the same hereby is dismissed upon the merits. It is further

Adjudged and decreed, that the defendant recover of the complainants the sum of one hundred and fifty-nine and $\frac{20}{100}$ dollars costs ($159.20).

ALFRED C. COXE, *U. S. J.*

Filed March 5, 1900.

106 *Stipulation as to Exhibits.*

United States Circuit Court, Northern District of New York.

LA REPUBLIQUE FRANÇAISE and LA COMPAGNIE FERMIERE DE l'Etablissement Thermal de Vichy, Complainants,
vs.
SARATOGA VICHY SPRING COMPANY, Defendant.

It is agreed by counsel that the exhibits used upon the hearing in the United States circuit court shall be delivered to counsel, complainants' exhibits to complainants' counsel and defendant's exhibits to defendant's counsel, to be produced upon the hearing in the appellate tribunal, and that this stipulation shall have the force and effect of an order.

ROWLAND COX,
Counsel for Complainants.
EDGAR T. BRACKETT,
Counsel for Defendant.

Filed Mar. 13, 1900.

107 *Order.*

At a term of the circuit court of the United States for the northern district of New York, held at the United States court-house and post-office building, in the city of Utica, in said district, on the 13th day of March, 1900.

Present: Hon. Alfred C. Coxe, judge.

LA REPUBLIQUE FRANÇAISE and LA COMPAGNIE FERMIERE DE l'Etablissement Thermal de Vichy, Complainants,
vs.
SARATOGA VICHY SPRING COMPANY, Defendant.

The complainants in the above-entitled cause being about to take an appeal from the final decree entered herein to the United States circuit — of appeals for the second circuit, and the record in the case of the complainants herein against Louise Schultz, executrix, having been read on the final hearing of this cause, it is

Ordered, that the record in the said case of the complainants herein against Louise Schultz, executrix, may be used upon the argument of the appeal in this cause with the same force and effect as if a duly authenticated copy of said record had been transmitted with the record on appeal in this case.

ALFRED C. COXE, *U. S. J.*

We assent to the entry of the foregoing order.

ROWLAND COX,
Sol'r for Comp'ts.
EDGAR T. BRACKETT,
For Vichy Co., Def't.

Filed March 13, 1900.

108 United States Circuit Court, Northern District of New York.

LA REPUBLIQUE FRANÇAISE and LA COMPAGNIE FERMIERE de l'Etablissement Thermal de Vichy, Complainants,
vs.
SARATOGA VICHY SPRING COMPANY, Defendant.
} In Equity.

Petition for Appeal.

The above-named complainants, conceiving themselves aggrieved by the final decree filed and entered in the office of the clerk of this court on the — in the above-entitled cause, do hereby appeal therefrom to the United States circuit court of appeals for the second circuit, and they pray that their appeal may be allowed and a citation granted, directed to the above-named defendant, commanding it to appear before the United States circuit court of appeals for the second circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings and evidence in said cause, duly authenticated, may be sent to the United States circuit court of appeals for the second circuit.

Dated March 10, 1900.

ROWLAND COX,
Solicitor for Complainants.

109 The complainants having filed a stipulation waiving the filing of security for costs, it is,

Ordered, that the foregoing appeal be and the same is hereby allowed.

Dated March 10, 1900.

(Signed) E. HENRY LACOMBE,
U. S. Circuit Judge.

Service of a copy of the foregoing petition and order is admitted this — day of March, 1900.

(Signed) EDGAR T. BRACKETT,
Solicitor for Defendant.

United States Circuit Court, Northern District of New York.

LA REPUBLIQUE FRANÇAISE ET AL.
vs.
SARATOGA VICHY SPRING COMPANY.
} In Equity.

It is hereby stipulated and agreed that the complainants in the above-entitled cause may perfect their proposed appeal from the final decree herein to the United States circuit court of ap-

110 peals for the second circuit without filing a bond or other security for costs, as required by the rules of the court.

ROWLAND COX,
Solicitor for Complainants.
EDGAR T. BRACKETT,
Solicitor for Defendant.

Ordered accordingly.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) Stipulation waiving filing security for costs.—Filed Mar. 13, 1900.

United States Circuit Court, Northern District of New York.

LA REPUBLIQUE FRANÇAISE ET AL.
vs.
SARATOGA VICHY SPRING COMPANY. } In Equity.

And now come the complainants and say that, in the record and proceedings of the said court in the above-entitled cause, and in the final decree made therein on the 5th day of March, 1900, there is manifest error, and for errors the said complainants assign as follows:

1. The court erred in that it did not find that the word "vichy," when truthfully used has now and has always had a well-recognized meaning as indicating the water drawn from the springs at
111 Vichy and particularly the springs of the complainants, and that the use of the name "vichy" by the defendant as a name or designation for water drawn from its springs located at Saratoga should be enjoined.

2. The court erred in that it did not hold that the real complainant in the case, La Republic Française, being a sovereign power, there could be no imputation of laches.

3. The court erred in that it omitted to give effect to the rule that acquiescence, so called, in a case like the present has the effect of a revokable license which is terminated by affirmative action by the constructive licensor.

4. The court erred in that it did not hold that if there was acquiescence the fault of the complainants was immaterial as affecting their right to an injunction.

5. The court erred in that it failed to find that the defendant had been guilty of fraudulent and inequitable conduct in making use of imitations of complainant's labels and bottles.

6. The court erred in that it failed to restrain the use by the defendant of labels, advertisements and publications in which the word "vichy" was made to be the dominating feature.

7. The court erred in that it did not hold that on the facts of the case the use by the defendant of the name "vichy" was at all times

fraudulent, arbitrary and inequitable, and an infringement and violation of the rights of the complainants with respect to which there should be injunctive relief.

8. The court erred in holding that the case was controlled by the decision of the U. S. circuit court of appeals for the second circuit, in the case of La Republique Française *et al. vs.* Schultz.

112 9. The court erred in not granting an injunction restraining the defendant from making use of the word "vichy" as the name of defendant's spring, or as part of defendant's corporate name, or as the name or designation or part of the name or designation of the water by it the defendant offered and sold.

10. The court erred in dismissing the bill of complaint.

ROWLAND COX,
Complainants' Solicitor.

(Endorsed:) Assignment of errors.—Filed Mar. 13, 1900.

By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the northern district of New York, in the second circuit.

To Saratoga Vichy Spring Company, Greeting:

You are hereby cited and admonished to be and appear before a United States circuit court of appeals for the second circuit, to be holden at the borough of Manhattan in the city of New York, in the district and circuit above named, on the 4th day of April, 1900, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of New York, wherein La Republique Française and La Compagnie Fermiere de la Etablissement Thermal de Vichy are complainants and appellants and you are defendant and appellee to show cause, if any there be, why the final decree in said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 10th day of March, in the year of our Lord one thousand nine*teen* hun-

113 dred, and of the Independence of these United States the one hundred and twenty-fourth.

E. H. LACOMBE,
Judge of the Circuit Court of the United States for the Northern District of New York, in the Second Circuit.

Service of a copy of the foregoing citation admitted March 15, 1900.

EDGAR T. BRACKETT,
Solicitor for Defendant.

(Endorsed:) United States circuit court of appeals for the second circuit.—La Republique Française *et al.*, *vs.* Saratoga Vichy Spring

Company.—Citation.—U. S. circuit court, N. D. of N. Y.—Filed March 16, 1900.—W. S. Doolittle, clerk.

UNITED STATES OF AMERICA, *Northern District of New York,* } ss:

I, William S. Doolittle, clerk of the circuit court of the United States of America for the northern district of New York, in the second circuit, do hereby certify that the foregoing pages numbered from 1 to 116, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of La Republique Française and La Compagnie Fermiere de l'Etablissement Thermal de Vichy *vs.* Saratoga Vichy Spring Company as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of Utica, in the northern district of New York, in the second circuit, this sixteenth day of March, in the year of our Lord one thousand nine hundred, and of the Independence of the said United States the one hundred and twenty-fourth.

[SEAL.] W. S. DOOLITTLE, *Clerk.*

(Stamp.)

114 United States Circuit Court of Appeals for the Second Circuit, October Term, 1900.

Submitted January 23, 1901; decided April 9, 1901.

LA REPUBLIQUE FRANÇAISE, LA Compagnie Fermiere de l'Etablissement Thermal de Vichy, Complainants, Appellants, *vs.* THE SARATOGA VICHY SPRINGS Company, Defendant, Appellee. } No. 29. Appeal from the Circuit Court of the United States for the Northern District of New York.

Before Judges Wallace, Lacombe, and Shipman.

SHIPMAN, *Circuit Judge:*

This is an appeal from a decree of the circuit court for the northern district of New York, which dismissed the complainants' bill in equity to restrain the use of the word "vichy" upon the defendant's bottles containing the water of the spring known as the Saratoga vichy spring and for other relief, upon the ground that the defendant's labels and advertisements improperly and unfairly misled purchasers to believe that they were buying the complainants' article and unfairly interfered with their exclusive right to the use of the word "vichy."

The fact in regard to the title of the complainants to the spring at Vichy and to the labels upon the bottles in which it is exported

to this country and the extent of its business in the United States were stated in the opinion of this court in the case of the same complainants against *Schultz* (102 *Fed. Rep.*, 154) and are as follows:—

115 "The existence in the Commune of Vichy, in France, of numerous mineral springs which have long produced water of high medicinal value is well known. The water began to be sold as early as 1716, and became popularly known as vichy or vichy water. The Republic of France is the owner of nearly all these springs and by the terms of acts passed in 1853 and 1864, La Compagnie Fermiere de l'Etablissement Thermal de Vichy, hereinafter called the company, obtained the concession of the springs owned by the State for terms of years which have not yet expired. This company bottles at Vichy and sells in France and in other countries the waters of which it is the lessee, under labels which are its property and of which the characteristic marks consists in the name vichy and the name of the particular spring, and a wood-cut vignette showing the 'Thermal establishment.' In 1853, it began to export its water to this country and in 1893, its shipments to this country were about 300,000 bottles. In 1896, its entire shipments amounted to nearly 10,000,000 bottles. The natural waters are exported in their original condition and are not artificially charged with gas."

The township of Saratoga Springs has long been known as abundant in mineral springs, the waters of which are distinguished by different names, and in March, 1872, the geyser or spouting spring of the defendant was discovered in that town. The water is alkaline, is regarded by medical men as a valuable mineral water and has been recommended extensively by the defendant as having a wonderful similarity to the vichy waters of France. The water was bottled and sold in 1873 and thereafter until 1876 by the owners of the spring, when the defendant under the name of the Saratoga Vichy Spring Company became the owner and has since sold the water extensively under the name of Saratoga vichy water, or Natural Saratoga vichy water. The bottles, circulars and advertisements have invariably used the words Saratoga vichy. The water is highly charged with natural carbonic-acid gas and is bottled under a high pressure of that gas. The
116 water of the complainants is a still water. It was stipulated that the testimony in the Schultz case could be used in this case by either party and from that testimony it appears that the manufacture of artificial sparkling water compounded after the analysis of vichy water has been extensively carried on in this country since 1862 under representations of its artificial character, that it was understood by intelligent purchasers to be artificial and, as one was a sparkling and the other a still water, there was no confusion in the public mind as to the identity of the two articles, and the manufactured vichy became an article distinct from the still water of the natural spring.

The bottles and labels of the complainants and the defendant have been very unlike each other in general appearance and character and one could not be mistaken for the other by any person who had an acquaintance with either. Until 1896, the words Saratoga and vichy upon the labels were substantially in the same style and size of type and the name Saratoga was as prominently displayed as the name vichy. In 1896, a neck label of white paper printed in black and red letters was added by the defendant to its other labels. The word vichy is very prominently displayed and the Saratoga over it is in far less conspicuous type, so that if the bottle stands upon a table or a shelf the word vichy is the one which is the marked and prominent object of sight.

Like the manufactured water, the Saratoga water is understood by consumers to be sparkling and to have in that respect a character distinct from the still natural vichy.

It does not appear that the complainants expressed dissatisfaction with the acts of the defendant until the time of the commencement of this suit.

So long as the defendant confined itself rigidly to the universally conspicuous declaration upon its labels and bottles and in its advertisements that the contents of the bottles were Saratoga vichy water, it did not violate the rights of the complainants, because Saratoga vichy and the vichy of France are well understood
117 to be different articles, in that one is a sparkling and the other is a still water. They are used differently and, when used, no person could mistake one for the other. In this respect, both the natural water of Saratoga and the manufactured water of Schultz resemble each other, and accordingly, our decision in the Schultz case intimated very strongly that after the alteration by Schultz of his labels, subsequent to the commencement of the suit, so as to assert that his article was artificial vichy manufactured by himself, he was not open to the charge of unfair competition. Until 1896, the defendant's bottles uniformly and without disguise declared that the contents were Saratoga vichy water, and thus proclaimed the difference between two well-known articles; but, in the label of 1896, the defendant unfairly disregarded the previously acquired right of the complainants to the use of the word when applied to the product of their wells. The effect of the label is to represent to the purchaser not accustomed to the article that it is vichy water and "vichy" properly signifies water from the French wells. It is, in fact, an untruthful label employed for an objectionable purpose. It is true that a mere geographical name, without attending facts which have caused the name to become significant of a particular manufacture and to identify the manufacture as the product of a particular person, is not the subject of a trade-mark. The distinction, however, between mere names of a locality and the secondary signification of names which identify an article with its manufacturer or producer and which tell the public that an article so produced is of singular excellence with the result that the use of the name by a non-resident producer is unfair to the competitor

and fraudulent to the public has been long recognized. *Elgin National Watch Co. v. Illinois Watch Co.* (179 *U. S.*, 665). The decision in *Canal Co. v. Clark* (13 *Wall.*, 311) referred only to a denial of the exclusive right of a resident of a district of country to the application of its name to a well-known article of commerce, in that instance coal, so "as to prevent others, inhabiting the district or dealing in similar articles coming from the
118 district, from truthfully using the same designation." The decisions are abundant that where the name of a district of country has been used by an inhabitant of that district to identify his product and has become significant of the success and a declaration of the superiority of the product, a non-resident manufacturer cannot properly use the name to deceive the public and fraudulently obtain the good will which belongs to his competitor. Thus, a watchmaker of some other town than Waltham cannot properly call the articles which he produces "Waltham watches." The opinion in *Pillsbury-Washburn Flour Mills Co. v. Eagle* (86 *Fed. Rep.*, 608), which exhaustively collates the authorities upon the subject, among which *Thompsonv. Montgomery* (41 *Ch. Div.* 35) and *Wotherspoon v. Currie* (*L. R.*, 5 *H. L.*, 508) are important, states as the result of the decisions the distinction which has been referred to as follows:

"The distinction, both in the English and American cases, is between those where a geographical name has been adopted and claimed as a trade-mark proper, and those where, as in the case at bar, it has been adopted first as merely indicating the place of manufacture, and afterwards, in course of time, has become a well-known sign and synonym for superior excellence. In the latter class of cases, persons residing at other places will not be permitted to use the geographical name so adopted as a brand or label for similar goods for the mere purpose by fraud and false representation of appropriating the good will and business which long-continued industry and skill and a generous use of capital has rightfully built up."

The label of 1896 comes within the spirit of this prohibition, for it untruthfully tends to mislead the unwary purchaser and to gain the reputation which the Vichy natural springs have acquired.

The defendant should be enjoined against the use of this neck label or of any other label in which the place of the origin of its water is not as plainly and prominently made known as the fact that it is named Vichy.

119 Let the decree of the circuit court be reversed, with costs of this court, and the case be remanded to the circuit court with instructions to enter a decree in accordance with the principles herein expressed, and for an accounting of damages from the use of neck label of 1896, with costs of the circuit court.

Charles B. Hubbell, for the appellants.
Edgar T. Brackett, for the appellee.

120 United States Circuit Court of Appeals for the Second Circuit, October Term, 1900.

Submitted January 23, 1901; decided April 9, 1901.

LA REPUBLIQUE FRANÇAISE, LA COMPAGNIE Fermiere de l'Etablissement Thermal de Vichy, Complainants, Appellants, *vs.* THE SARATOGA VICHY SPRINGS COMPANY, Defendant, Appellee.	No. 29. Appeal from the Circuit Court of the United States for the Northern District of New York.

Before Judges Wallace, Lacombe, and Shipman.

WALLACE, *Circuit Judge:*

I dissent from the opinion of the court because, as I view the facts, the case does not disclose any attempt on the part of the defendant to represent its mineral water to purchasers as the French vichy. In its advertisements the defendant has studiously presented its water to the public as a product of its spring at Saratoga, and the labels and dress upon its bottles not only have never borne any similitude to those upon the bottles of the complainants, but have always distinguished it as Saratoga vichy water so plainly that misapprehension by purchasers was impossible. The word "Saratoga" is the valuable part of the descriptive name, because the reputed therapeutic virtues of Saratoga waters have rendered them the most popular mineral waters known in the markets where the defendant's water is offered for sale, and no sane man having the right to sell his mineral water as a Saratoga water would be tempted to
121 suppress that part of the name or sell it by any name which would denote a different origin. All the Saratoga waters are bottled and sold by distinctive names, such as "Saratoga Congress water," "Saratoga Hathorn water," etc., and the defendant, in naming its water Saratoga vichy, did so merely to distinguish it from the other Saratoga waters, and selected vichy as its distinctive name because its alkalinity assimilated it more nearly to the French vichy. The label which has met with animadversion in the opinion of the court is one used on the neck of the bottles. It is a fancy label having a white background, and printed upon it in red and black letters are the words "Saratoga vichy." The word "Saratoga" is above the word "vichy," but included between its extended V and Y. It is true that it is in smaller letters, but the letters are an eighth of an inch in height and breadth. Although not so conspicuous as the word "vichy," it is so prominent that it is almost inconceivable that it would not be observed across a counter. If this were the only label on the bottle there would be no color for the theory that it might mislead casual purchasers; but just below it is another label, covering nearly half the surface of the bottle, upon which is printed in letters three-fourths of an inch in length and breadth the words "Saratoga vichy water."

The decree which is authorized by the opinion will not be of the slightest practical benefit to the complainants, and will have no

effect except to subject the defendant to expense, for I cannot believe that any person ever has been misled, or ever can be misled, by the use of the neck label as the defendant has always used it, in conjunction with the body label.

I agree with the conclusion of the court below that the bill should be dismissed.

Charles B. Hubbell, for the appellants.
Edgar T. Brackett, for the appellee.

122 At a stated term of the United States circuit court of appeals, in and for the second circuit, held at the court-rooms in the post-office building in the city of New York, on the 19th day of April one thousand nine hundred and one.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, circuit judges.

LA REPUBLIQUE FRANCAISE ET AL., Complainants, Appellants,
vs.
SARATOGA VICHY SPRINGS COMPANY, Defendant, Appellee.

Appeal from the circuit court of the United States for the northern district of New York.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the northern district of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said circuit court be and it hereby is reversed with costs of this court, and the cause remanded to the circuit court with instructions to enter a decree in accordance with the opinion of this court, and for an accounting of damages for the use of neck label of 1896, with costs of the circuit court.

W. J. W.
E. H. L.
N. S.

It is further ordered that a mandate issue to the said circuit court in accordance with this decree.

123 Endorsed: United States circuit court of appeals, second circuit. La Republique Francaise *et al. vs.* Saratoga Vichy Springs Co. Order for mandate. United States circuit court of appeals, second circuit. Filed Apr. 22, 1901. William Parkin, clerk.

124 United States Circuit Court of Appeals, Second Circuit.

LA REPUBLIQUE FRANCAISE and LA CAMPAGNIE FERMIERE DE l'Establissement Thermal de Vichy
vs.
SARATOGA VICHY SPRING COMPANY.

To the honorable United States circuit court of appeals:

The petition of the Saratoga Vichy Spring Company, by its counsel, Edgar T. Brackett, respectfully shows to this honorable court as follows:

That this is an action by the complainants, to enjoin the use by the defendant of the name vichy.

The cause was heard at circuit, before Judge Coxe, at Utica, on the 12th day of December, 1899, and the bill was dismissed on the merits. On appeal by the complainants this honorable court, on the 9th day of April, 1901 handed down its decision reversing the said judgment and enjoining the defendant from making use of its neck label (of which the following is a copy)

or any neck label on which the name "Saratoga" was not as plainly and prominently displayed as the name "vichy." The said decision also directed that the defendant account for the profits derived from the use of said neck label.

The decree on said decision was filed May 31st 1901 and was received by defendant's counsel June 10, 1901.

At once upon the rendering of said decision by the court the defendant discontinued the use of its said neck label and in
125 place thereof substituted the following neck label

The defendant is satisfied with the said decree, except that part wherein it is directed to account, and now comes to ask the court to modify its decision by relieving the defendant from such accounting.

The question of an accounting was believed by the defendant to have been eliminated from the case. The late Roland Cox, former counsel for the complainants, told defendant's counsel in a personal conversation before the taking of the testimony, that he would waive any question of accounting; that his only object in the action was the broad question of the right to the use of the name "vichy." Relying upon this the defendant's counsel made no reference to the subject in his brief, either at circuit or upon appeal. In his oral argument at circuit, before Judge Coxe, Mr. Roland Cox also disclaimed all question of accounting, and in his printed brief he does not argue the question, but says in closing,

"Whether there should be an accounting is not very important," and then added, "There has been, since the bill was filed, a con-

tinuous use of the labels, etc., in which the word "vichy" has not been clearly and unmistakably qualified, and the complainants are not disposed to insist upon an accounting with respect to the period prior to the filing of the bill." In his supplemental brief the only relief asked for is an injunction restraining the use of the word "vichy" whether qualified by the word "Saratoga" or not.

The defendant, therefore, submits that if there is to be an accounting it should be limited to the time subsequent to the filing of the bill.

126 There are considerations, however, which, had they been suggested to the court it is believed would have influenced it to deny any accounting.

1. It is believed that the court will find only actual good faith and honesty of purpose on the part of the defendant. In such case an account is cons-tently refused.

McLean *v.* Fleming, 96 U. S., 257.

2. Defendant's bottle always presented two labels upon the same face, so that the eye could not take in the one without seeing the other and the lower and larger label is approved. It is therefore in evidence that taking defendant's bottle as a single package the name "vichy" on the neck label was always accompanied by words "indicating" the origin of the water, displayed as plainly and prominently as the word "vichy" as the following cut will show.

If the labels were connected the criticism would be answered. But so far as the bottle is considered as a single package always presenting the same face, they are connected and the word "vichy" is always qualified by the word "Saratoga" as plainly and prominently displayed.

127 III. The complainants do not claim to have lost any business by reason of the defendant's acts, and, although it was attempted, they failed to show that any one had ever purchased a bottle of the defendant's water as that of the complainants'.

See Defendant's Brief, point VI.

IV. It appears in evidence that there are other mineral springs at Vichy, not owned by the State, and which are worked commercially by the respective owners, viz: the Lardy, the Larband, worked by the Compagnie Generale des Eux Minerales et des Bains de Mer, the Prunelle, belonging to M. N. Larband, and others. These springs are merely private ventures, upon ground owned by the respective owners of the springs.

(Complainants' Record, Schultz case, fols. 144, question G, to fol.: 149, 220–222, 227–'8; Defendant's Record, pp. 61, 64.)

There exists also in France, but outside of the commune of Vichy, springs owned, bottled and sold by private individuals as vichy waters.

(Defendant's Record, Schultz case fols. 183–189.)

The use of the name of a locality in France belongs only to the inhabitants.

(Complainants' Record, Schultz case fol. 283.)

And the waters other than those belonging to the State are sold as "vichy."

(Complainants' Record Schultz case fol. 221.)
Defendant's " " " " 82.

And are exported by the private owners and sold in the American market.

(Defendant's Record Schultz case, fols. 183–189–82.)

From the above it appears that these complainants are not the only ones entitled to complain they have not the exclusive right to the name vichy, but the name is common to the inhabitants

128 of the section. Any private owner of a vichy spring in France who exports his water to this country has therefore, the same right to call the defendant to account as have these complainants. And will a court of equity compel the defendant to account in full to the first complainant who comes along although he has suffered but a portion of the damage caused by the defendant's acts?

Wherefore, your petitioner respectfully prays that the decree herein be modified by striking therefrom that part directing the de-

fendant to account, and for such other and further rule or order as may be just.

Dated August 16th 1901.

THE SARATOGA VICHY SPRING CO.,
By EDGAR T. BRACKETT, *Counsel.*

STATE OF NEW YORK, } ss:
County of Saratoga, }

Edgar T. Brackett being duly sworn says that he is the attorney and counsel for The Saratoga Vichy Spring Company, the petitioner above named; and as such has personal charge of the case in the foregoing petition mentioned; that he has read the said petition, by him subscribed, and that the facts therein stated are true to the best of his information and belief.

EDGAR T. BRACKETT.

Sworn to before me this 17th day of August, 1901.

HIRAM TODD,
Notary Public.

129 United States Circuit Court of Appeals, Second Circuit.

LA REPUBLIQUE FRANCAISE and LA CAMPAGNIE FERMIERE DE l'Establissement Thermal de Vichy
vs.
SARATOGA VICHY SPRING COMPANY.

STATE OF NEW YORK, } ss:
County of Saratoga, }

Walter P. Butler being duly sworn says that he is counsel with Edgar T. Brackett for the defendant herein: that in the month of March, 1899, deponent had a consultation with Roland Cox, former counsel for the complainants, in his office in the city of New York, concerning this cause: that in the course of said conversation the said Cox told deponent that this action was brought solely to determine the right of the defendant to use the name "vichy;" that he did not seek an accounting and would eliminate that question from the case.

That deponent was present at the argument of this cause at circuit and there heard Mr. Cox state in open court that he did not ask for an accounting.

W. P. BUTLER.

Subscribed and sworn to before me, this 17th day of August, 1901.

L. M. HASKINS,
Notary Public.

130 (Endorsed:) United States circuit court of appeals second circuit. La Republique Francaise and ano. *vs.* Saratoga Vichy Spring Company. Petition for modification of decree.

Edgar T. Brackett, defendant's counsel, town hall, Saratoga Springs, N. Y. United States circuit court of appeals, second circuit. Filed Aug. 19, 1901. William Parkin, clerk.

131 United States Circuit Court of Appeals, Second Circuit.

LA REPUBLIQUE FRANCAISE and LA CAMPAGNIE FERMIERE DE l'Establiss-ment Thermal de Vichy
vs.
SARATOGA VICHY SPRING COMPANY.

STATE OF NEW YORK, *County of New York,* } ss:

Charles Bulkley Hubbell being duly sworn deposes and says: That he is the solicitor and counsel for complainants in the above-entitled case; that he was substituted as such solicitor and counsel in place of Rowland Cox, Esq., deceased who previously acted in that capacity and that such substitution was confirmed by an order of this honorable court duly entered on the 20th day of August, 1900.

That deponent received from Archibald Cox, Esq., successor of his father, Rowland Cox, deceased, all the papers and the record in the said action and that there was not included among the said papers any stipulation or agreement or record of any such stipulation or agreement in any way referring to any waiver of any accounting that might be had in the said action.

Nor has any waiver or disclaimer with reference to the right, purpose or intent of the complainants in this action concerning any accounting or any recovery prayed for in the bill of complaint, been filed in the said action.

Deponent further says that he has questioned both Mr. Cox and Mr. Herman Gustow, the latter having been the managing clerk of Mr. Rowland Cox, deceased for many years with reference to any agreement that might have been made by Mr. Rowland Cox,
132 deceased relating to any waiver of an accounting in this suit, and that deponent has been assured by both of these gentlemen that Mr. Rowland Cox never in any way indicated to them that he had *had* made any such agreement with defendant's counsel.

Deponent further says that never having heard of any disclaimer or waiver as to an accounting of profits in this case he never in any way indicated to the counsel for defendant that it was his purpose to waive such an accounting and furthermore, that he did not on the argument of this case before this honorable court in any way indicate that it was his purpose or intention to waive any of his client's right as set up in the bill of complaint to an accounting by reason of the grievances set forth in the said bill, nor did the counsel for defendant on the argument referred to state to this court that there was any such disclaimer or waiver on the part of any of the counsel who had appeared for the complainants in this case.

Deponent further says that he has examined all the correspondence between the complainants and Rowland Cox, Esq., deceased relating to the bringing of the said case and its maintenance in the courts and that there was no statement made in any letter authorizing the said Rowland Cox to waive any accounting in the said action.

CHAS. BULKLEY HUBBELL.

Sworn to before me this 14th day of September, 1901.

EUGENE SMITH,
Notary Public, Co. of N. Y.

133 United States Circuit Court of Appeals for the Second Circuit.

LA REPUBLIQUE FRANCAISE ET AL., Complainants,
vs.
SARATOGA VICHY SPRING COMPANY, Defendant.

STATE OF NEW YORK,
County of New York.

Herman Gustow, being duly sworn, deposes and says: That for many years and just prior to the death of the late Rowland Cox, referred to in the affidavits of Edgar T. Brackett and Walter P. Butler, and during the time when said Rowland Cox acted as counsel for complainants in the above-entitled cause, he was managing clerk in the office of the said Rowland Cox and familiar with the proceedings had in the said case.

That except as he is informed by the affidavits of Edgar T. Brackett and Walter P. Butler deponent has no knowledge whatsoever of any agreement or understanding or negotiations as to waiving claim for an accounting in the above-entitled cause.

HERMAN GUSTOW.

Subscribed to and sworn to before me this 13th day of September, 1901.

CHAS. C. GILL,
[L. S.] *Notary Public, N. Y. County.*

134 United States Circuit Court of Appeals for the Second Circuit.

LA REPUBLIQUE FRANCAISE ET AL., Complainants,
vs.
SARATOGA VICHY SPRING COMPANY, Defendant.

STATE OF NEW YORK,
County of New York, } ss:

Archibald Cox, being duly sworn, deposes and says:—

That he is of counsel for complainants in the above-entitled cause.

That except as he is informed by the affidavits of Edgar T. Brackett and Walter P. Butler deponent has no knowledge whatsoever of any

agreement or understanding or negotiations as to waiving claim for an accounting in the above-entitled cause.

ARCHIBALD COX.

Subscribed and sworn to before me this 13th day of September 1901.

HERMAN GUSTOW,
[L. S.] *Notary Public, New York County.*

135 (Endorsed:) U. S. circuit court of appeals. La Republique Francaise, *et al.*, complainants, *vs.* Saratoga Vichy Company, defendant. Opposing affidavits. Chas. Bulkley Hubbell, solicitor for compl'ts, 31 Nassau street, New York city. United States circuit court of appeals, second circuit. Filed Sep. 16, 1901. William Parkin, clerk.

136 *Memorandum Decision.*

REPUBLIQUE FRANCAISE
vs.
SARATOGA VICHY SPRINGS.

Decree modified as prayed.

Endorsed: Decision. United States circuit court of appeals second circuit. Filed Oct. 30, 1901. William Parkin, clerk.

137 At a stated term of the United States circuit court of appeals in and for the second circuit, held at the United States court-house in the city of New York, on the 30th day of October, 1901.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, judges.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Establissement Thermal de Vichy, Complainants,
vs.
SARATOGA VICHY SPRINGS COMPANY, Defendant.

The defendant, Saratoga Vichy Springs Company, having moved this court for an order modifying the decree of May 31st, 1901 herein, by striking therefrom the provisions requiring the defendant to account, and the court having read and filed the petition of the defendant therefor, and the opposing affidavits of the complainants, and after due deliberation it is on motion of Edgar T. Brackett, counsel for defendant

Ordered; that the decree herein of May 31st, 1901, be and the same hereby is modified and amended by striking therefrom the following paragraphs, viz:

"That this cause be referred to Richard R. Martin, Esq., of the city of Utica, N. Y. a master of this court, *pro hac vice*, to ascertain

and take and state and report to this court an account of the number of bottles or receptacles sold by the defendant to which have been applied labels like the label hereto attached and designated 'Defendant's neck label;' and also the gains, profits and advantages which the defendant has received or which have arisen or accrued to it from the sale of said receptacles bearing said labels.

138 "That the complainants on such accounting have the right to cause an examination of the officers agents or employees of said defendant, *ore tenus*, or otherwise, and also the production of the books, vouchers and documents of said defendant; and that the defendant attend for such purpose before said master from time to time as the master shall direct.

"That the complainants do recover of the defendant the damages sustained by them from the use by defendant of labels like that hereto attached and designated 'Defendant's neck label'

"That upon the coming in and confirmation of the said report complainants have a decree and execution for the amount due to to them."

W. J. W.
E. H. L.

Endorsed: United States circuit court of appeals second circuit. La Republique Francaise and ano. *vs.* Saratoga Vichy Spring Company. Order for modification of decree. Edgar T. Brackett, defendant's counsel, town hall, Saratoga Springs, N. Y. United States circuit court of appeals, second circuit. Filed Nov. 11, 1901, William Parkin, clerk.

139 UNITED STATES OF AMERICA, } *ss:*
Southern District of New York, }

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 138 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of La Republique Francaise & ano. against Saratoga Vichy Springs Co. as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 22nd day of January in the year of our Lord one thousand nine hundred and one and of the Independence of the said United States the one hundred and twenty-sixth.

Seal United States Circuit Court of Appeals, Second Circuit.

WM. PARKIN, *Clerk.*

a United States Circuit Court, Southern District of New York.
In Equity.

LA RÉPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIÈRE DE l'Établissement de Vichy, Complainants,
against
LOUISA SCHULTZ, Executrix, Defendant.

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1 *Bill of Complaint. Filed January* 23, 1892.

Circuit Court of the United States, Southern District of New York.

LA RÉPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIÈRE DE l'Établissement Thermal de Vichy, Complainants,
against
CARL H. SCHULTZ, Defendant.

To the honorable the judges of the circuit court of the United States within and for the southern district of New York, sitting in equity:

La République Francaise and La Compagnie Fermière de l'Établissement Thermal de Vichy bring this their bill of complaint against Carl H. Schultz, and thereupon your orators allege and complain as follows:

First. That your orator La République Francaise is an independent State, and one of the sovereign powers of the earth, having its main territory and chief seat of authority in that part
2 of the continent of Europe designated and known as France, and that in its national character under French law it is denominated "The State," in which capacity its existence is, in legal contemplation, immutable and perpetual notwithstanding changes in the form of its government, or of dynasty, or succession, and by which term your said orator, for brevity of reference, will be hereinafter referred to.

Second. That your orator La Compagnie Fermiere de l'Établissement de Vichy is a corporation duly organized and existing under and by virtue of the laws of the said State, and is hereinafter referred to as the "Vichy Company."

Third. That the defendant, as your orators are informed and believe, is a citizen of the United States and of the State of New York, and resides within the territorial jurisdiction of this honorable court.

Fourth. That this is a suit of a civil nature where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, in which there is a controversy between a citizen of a State, and foreign States, citizens or subjects, within the intent or meaning of the act of Congress in such case made and provided, to wit, a controversy between a citizen of the United States and of the State of New York on the one hand, and a foreign State, together with a foreign citizen or subject thereof, on the other hand.

And your orators further allege and complain as follows:

Fifth. That within the aforementioned main territory of your orator the said State, to wit, in the political subdivision thereof denominated and known as the department of the Allier, there is a certain municipality, commune or town by the name of
3 Vichy, the same being on the right bank of the River Allier, about two hundred and twenty-seven miles distant by rail-

way, and in south-southeasterly direction, from the city of Paris, the capital of your said orator *of* the State, which said town of Vichy has been known in all civilized countries of the world since the discovery of the locality during the period of the Roman Empir , and at the same time celebrated and renowned for the waters obtained from numerous mineral springs situated therein and thereabouts, the said waters being, and for ages prior to the facts hereinafter stated and complained of, having been, universally called by the short and emphatic term of "Vichy" waters.

Sixth. That under the ancient monarchical system of France the feudal lords of the realm were the owners of all the sources or springs, whether mineral or otherwise, and of all rivers, streams, rivulets and other waters enclosed by French territory. In the year 1344, Jean, Lord of Vichy, being then seized and possessed of all the estates in lands and mineral springs then existing in and about the abovementioned town bearing the name of its feudal lord, sold the same, together with the castle of Vichy and all its dependencies, including the mineral springs since known as the "Celestins," the "Grande Grille," the "Hopital" the "Parc," the "Lucas" and the "Puits Chomel," to Pierre, Duke of Bourbon in whom, and afterwards in whose heirs and descendants, the title and ownership of the same remained until the year 1531, when, after the treason of the constable of Bourbon, "the Bourbonnais," by which term the title, dignities, property and rights of the house of Bourbon were known, were confiscated by Francis the First, then King of France; whereupon all the estates of the said house of Bourbon in lands and other property, including the aforesaid mineral springs and all the territory about them, became vested in the Crown of France, as represented
4 by the family of the reigning sovereign, in whose possession and ownership the said mineral springs remained until the year 1790, when the same were united to the public domain of your orator the State, which thereupon became, and has ever since remained, the sole owner of the said mineral springs absolutely and forever.

Seventh. That afterwards, to wit, on or about the 10th day of June, 1853, your orator the said State duly acquired, and has ever since remained the sole owner of three other certain mineral springs discovered and developed since those mentioned in the foregoing paragraph were discovered and developed as aforesaid, which latter three springs are known and designated by the names "Brosson," "Mesdames" and "Hauterive," the first two of which are also situated in said town of Vichy, and the latter one in one of the adjoining districts, its name being derived from the locality itself, which is called "Hauterive."

Eighth. That since the said year 1853 all the said mineral springs have been and are still protected by law from trespass or diversion by a perimeter of protection embracing all that part of the said town of Vichy, in which mineral springs of any kind are situated or operated, and extending into the adjoining villages or communes of "Abrest," "Vesse" and "Cusset," as shown in the annexed map or diagram, marked "Perimètre de Protection des Eaux."

Ninth. That at the same period, to wit, the said year 1853, and for many years previously thereto, the said mineral springs at Vichy were operated by the direct agency and control of the government of your orator the said State, through certain officers and subordinates appointed for that purpose, by whom, under suitable rules and regulations, the public were afforded access to the springs to drink
5 and bathe in the waters thereof, and who maintained thereat an elaborate thermal establishment with various dependencies for the use and enjoyment of visitors thereto, and, under the same authority, drew from the said springs large quantities of the said waters, and prepared and sold the same in bottles for use abroad in various parts of the world by such persons as could not resort to the said springs in person; all of which operations were then, and, in conjunction with the said Vichy Company, are still a source of large revenue to your orator the said State.

Tenth. That the said waters by the name of "Vichy," in connection with the several names of the particular springs from which the said waters are respectively drawn, are, and for centuries past have been, celebrated throughout the world for their medical, therapeutic and curative qualities; and by reason of the latter qualities and such their wide celebrity and extensive sale and use, not only at the thermal establishment at Vichy, but in numerous other places elsewhere and, in fact, in all civilized countries of the world, including the United States of America, the short name thereof, to wit, the word "vichy" as applied to mineral waters, has become of great value to your orator the State, and constitutes, and for a long period, and long prior to the wrongful acts of the defendant hereinafter stated, has constituted an important and necessary incident and means to the sale and consumption of the said mineral waters.

Eleventh. That in or about the month of June, 1853, l'Empire Francais, the predecessor of your orator, La Rápublique Francaise, in the government of the said State, acting by its several ministers and departments, and finally by the imperial authority of Napoleon the Third, then Emperor of the French, in consideration of a stated rental or tribute to your orator the said State, duly leased and conceded to the copartnership firm of Lebobe, Callou & Co., of
6 the city of Paris, and of the said town of Vichy, France, the exclusive right and privilege of operating the aforesaid mineral springs of Vichy, including the thermal establishment thereat, and all the rights and privileges thereunto appertaining and belonging, including the exclusive right and privilege of taking the waters from the said springs, and the preparation and sale thereof in bottles or other receptacles in other places and countries throughout the world, as well as the necessary incident and appurtenant privilege of designating, labelling and otherwise calling the said waters by their proper and customary appellation of "vichy" waters, for the period of thirty-three years from the 10th day of June, 1853, and that the said copartnership of Lebobe, Callou & Co was subsequently converted into a company designated by French law as *en commandite*, with Messrs. Lebobe and Callou, of the said copartnership firm, as sole managers, whereupon the latter company, in due form

of law, succeeded to, and became possessed of all the property, rights and privileges of the said copartnership firm of Lebobe, Callou & Co. in the premises.

Twelfth. That on or about the 27th day of December, 1862, by an imperial decree of Napoleon the Third, then, as aforesaid, Emperor of the French, the body corporate of your orator The Vichy Company was duly formed and established according to the laws of the said Empire Francais by the name and style of "Compagnie Fermière de l'Établissement Thermal de Vichy," and thereupon your said orator The Vichy Company in due form of law succeeded to the aforesaid company *en commandite*, of whom Messrs. Lebobe and Callou were managers as aforesaid, and at the same time acquired all its property, rights, privileges and franchises, including, and especially, all the rights and privileges conferred by the aforesaid lease and concession of the mineral springs and thermal establishment
7 of Vichy, as well as the right to use the word "vichy" to designate the said waters.

Thirteenth. That by virtue of an agreement duly entered into by the minister of public works, commerce and agriculture of the said Empire Francais, and your orator The Vichy Company, which said agreement was subsequently duly ratified by the corps legislatif of the said Empire Francais, and soon thereafter, and on or about the *the* 10th day of April, 1864, sanctioned by the imperial authority thereof, the period or duration of the said lease of the said springs and thermal establishment at Vichy and their dependencies, made originally to the copartnership firm of Lebobe, Callou & Co., and afterwards duly acquired by your orator, The Vichy Company, as aforesaid, was extended eighteen years longer, so that the same will continue under existing conditions until the 10th day of June, 1904.

Fourteenth. That on the 4th day of September, 1870, the said Empire Francais was overthrown by the will of the people of France, and, after the intervention of a temporary or provisional government of short duration, all of the authority and powers, and all the rights, property, privileges and franchises vested in the said Empire Francais, including its property in and title to the said mineral springs and thermal establishment at Vichy, lawfully devolved upon your orator La République Francaise, whereupon your said orator, as the government of the said State, duly became, and has ever since remained the sole and exclusive owner of the aforesaid mineral springs and thermal establishment at Vichy, and entitled, subject to the terms of the said lease, to the exclusive property in and to the use and enjoyment of the same, including the right to designate and brand the said mineral waters by the name "Vichy."

8 Fifteenth. And your orator The Vichy Company further shows, that since its acquisition of the said lease and the right to operate the said mineral springs and thermal establishment at Vichy, it, as well as its predecessors aforesaid, has expended large sums of money in the improvement and embellishment of the same, and by its industry and enterprise, and by the industry and enterprise of its predecessors to whose rights it has succeeded as afore-

said, the fame and celebrity of said waters have become much more extended throughout the world, and the demand for and sale of the same in various countries, including the United States of America, has very largely increased. **And your said orator further shows that it has from time to time extended and developed the industrial operation of the said springs and the sale of their waters, and that since the year* 1854 *it has, among other things, evaporated the said waters and sold the salts and other resultant products of such evaporation by the name of "Vichy salts" for transportation to distant places, and to be brought back to their original state of solution by the introduction of pure water; and that your orator has more recently prepared and still prepares the said salts and other resultant products of such evaporation in the form of powders, pastil-es and confections for the more convenient and palatable consumption thereof;* and that the name "Vichy," as applied to mineral waters **and the other products of the said springs,* is of great value to the said Vichy Company in the sale thereof, as well as of great value to your orator, the State, as an incident to its ownership of and ultimate property in the said springs.

Sixteenth. But, notwithstanding the foregoing facts, your orators allege and complain that the defendant, Carl H. Schultz, without the license or consent of your orators, or either of them, and
9 at the city of New York, in the State of New York, and at other places in the United States of America, is now, and, as your orators are informed and believe, for some time past has been, manufacturing counterfeit mineral waters in imitation or purported imitation of the mineral waters extracted from one of the said springs of your orators called "Grande Grille," **and made of chemicals and other deleterious substances and not of the natural salts and other true components of the genuine spring belonging to your orators as aforesaid,* and that he is selling, and as your orators are informed and believe, has for some time past sold the said counterfeit mineral waters in bottles and other receptacles broadcast throughout the United States as "vichy" waters, and especially as of the aforesaid spring particularly designated "Grande Grille," and to which counterfeit waters the said defendant applies labels having thereon printed the word "Vichy" and the words "Grande Grille;" and that, in the application of the said names to bottles containing such counterfeit waters, the said defendant uses and has used two labels which are pasted on opposite sides, one containing the words "Vichy" and "Grande Grille," together with the name and address of the defendant, and the other the formula of the alleged chemical elements or composition of the said waters in connection with other matter, the first mentioned of said labels being as follows:

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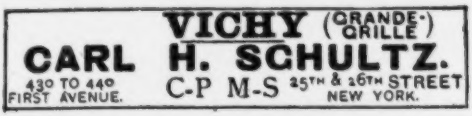
*Matter in italics inserted by am'd't.



And the other said label is as follows:

Carl Schultz's Vichy	(GRANDE GRILLE,) BAUER	PARTS IN 100,000
Potassium Sulphate,	20.404	Ammonium Carbonate, 0.469
Sodium Sulphate,	11.771	Calcium Carbonate, 25.003
Sodium Phosphate,	0.422	Strontium Carbonate, 0.237
Sodium Chloride,	47.878	Magnesium Carbonate, 3.529
Sodium Bromide,	0.013	Iron and Manganese, traces
Sodium Iodide,	0.003	Alumina, 0.078
Sodium Carbonate,	380.130	Silicic Acid, 6.406

10 A bottle containing some of the said counterfeit mineral water made by the defendant, and labeled as just stated, will be produced at the final hearing of this cause.

Seventeenth. And your orators further show that the name "Bauer" printed upon the label last above set forth [is that of an European chemist who made an analysis of the "Grande Grille" spring of Vichy many years ago, and therefore, that]* *in connection with* † the said formula of chemical elements placed upon the said counterfeit waters of the defendant is intended to represent, in addition to the representation implied by the use of the words "Vichy" and "Grande Grille," that the said counterfeit waters of the defendant are the natural and genuine waters of Vichy, and that they contain the chemical and therapeutic qualities of the aforesaid spring called "Grande Grille," whereas your orators allege that the said representations are untrue in fact, the said vichy waters of the "Grande Grille" spring being of a pronounced and established medical and chemical quality, and the said waters of the defendant, on the other hand, besides being counterfeit, are not of the same, nor of substantially the same chemical composition, and that they are not of the same, nor of substantially the same medical and therapeutic action, as the said natural and genuine waters of your orator's said mineral spring at Vichy; by reason of which facts the rights of your orators to the exclusive use of the names "Vichy" and "Grande Grille" are not only invaded and infringed, as shown by the averments hereinbefore set forth, but the good name and reputation of the aforesaid natural and genuine mineral waters are misrepresented, disparaged and brought into ill-repute, and the market therefor and sale thereof confused and disordered.

11 Eighteenth. And your orators allege that the aforesaid acts of the defendant have been and still are the cause of great damage and injury to the complainants, and that the same are, and, unless restrained and enjoined by the writ of injunction of this or some other court of competent jurisdiction in the premises, will be a continuing and constant damage and injury to the com-

*Matter in brackets stricken out by am'd't.
† Matter in italics inserted by am'd't.

plainants in and about the said business, as well as a continuing and constant damage and injury to the good will thereof, and the said right of the complainants to use the said word "vichy" exclusively upon the natural mineral waters taken from the aforesaid springs.

Your orators therefore pray, that it may please this honorable court to issue the writ of subpœna directed to the said defendant, Carl H. Schultz, requiring him on a day certain to be therein named, to appear before this honorable court, and to then and there answer on oath all and singular the premises, and to abide by and perform the decree or sentence of this honorable court in the premises; and that a preliminary restraining order as well as a temporary or provisional writ of injunction (the latter of which your orators pray may be made perpetual upon the final hearing of this cause) may be issued according to the usual course and practice of this honorable court, forbidding, enjoining and restraining the said defendant, Carl H. Schultz, his attorneys, agents and servants, from the infringement of the rights of your orators in the premises, and as hereinbefore complained of, and especially from the further use of the word "Vichy," and the words "Grande Grille," singly or together, upon or in connection with any waters not taken from the springs of your orators at Vichy, whether such use be for the purpose of designation, description or comparison; and, that the said defendant may, by the decree or sentence of this honorable court, be compelled to account to and with your orators for the profits made by him
12 upon the sale of all waters not taken from the springs of your orators at Vichy to which he has affixed the said words "Vichy" and "Grande Grille," or either of them; and that the said defendant may be also compelled to pay to your orators the damages which they may recover upon a feigned issue which may be hereafter awarded unto your orators, or otherwise, according to the course and practice of this honorable court, as well as the costs and disbursements of this suit; and that your orators may have such other or further order or relief in the premises as to this honorable court may seem proper, lawful and just.

And your orators will ever pray, &c.

JONES & GOVIN,
Solicitors for Complainants, 45 Cedar Street, New York City.

EDWARD K. JONES, *Of Counsel.*

(Here follows map marked p. 12*a*.)

FOLDOUT(S) IS/ARE TOO LAR

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Edward K. Jones, being duly sworn, deposes and says: That he is one of the firm of Jones & Govin, the solicitors for the complainants in this cause; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true to the knowledge, information and belief of the deponent; that the deponent's information as to all matters therein alleged which are not within his personal knowledge is derived from conversations with the officers and agents of the above-named La Compagnie Fermiere de l'Etablissement de Vichy, and from letters from the proper ministerial and corporate officers of the complainants respectively; that he is duly authorized and empowered to institute the present suit in the joint name of the complainants by the minister of the interior of
La République Francaise, and by the board of directors,
13 otherwise called the council of administration, of La Compagnie Fermière de l'Etablissement de Vichy; and that the reason why this verification is not made by the officers of plaintiffs themselves is because all of them reside outside the southern district of New York, and are at present actually within the territory of the Republic of France.

EDWARD K. JONES.

Sworn to and subscribed before me this 21st day of January, 1892.

[SEAL.]

FREDERICK KOPF,
Notary Public (34), *N. Y. Co.*

Answer. Filed August 29, 1893.

Circuit Court of the United States, Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE de l'Etablissement Thermal de Vichy, Complainants,
vs.
CARL H. SCHULTZ, Defendant.
} In Equity.

The answer of Carl H. Schultz, defendant, to the bill of complaint of La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, complainants.

14 This defendant, answering said complainants' bill of complaint, says:

First. He denies, on information and belief, each and every allegation contained in paragraphs numbered one and two and in paragraphs numbered four to fifteen, inclusive, of the bill of complaint.

Second. He denies that the complainant La Compagnie Fermiere de l'Etablissement Thermal de Vichy is a corporation duly organ-

ized and existing under and by virtue of the laws of the State of France; denies also that the matter in dispute in this suit, exclusive of interests and costs, exceeds the sum or value of two thousand dollars, and denies specifically that the complainants are in any manner whatsoever entitled to the exclusive use of the term "Vichy" on mineral water.

Third. Respecting the 16th paragraph of the bill of complaint, this defendant, answering, says: That it is not true that at any time he has been manufacturing counterfeit mineral water of any kind, or counterfeit mineral waters in imitation or purported imitation of the mineral waters extracted from one of the said springs, referred to in the bill of complaint, called "Grande Grille," or that he is selling or ever has sold counterfeit mineral waters in bottles or other receptacles broadcast throughout the United States as "vichy" waters, and especially as of the aforesaid spring particularly designated "Grande Grille," or that to any counterfeit waters said defendant has ever applied any labels whatsoever, since this defendant has never made any counterfeit mineral waters or dealt in counterfeit goods of any kind whatsoever.

Fourth. This defendant, further answering, says: That he has for more than thirty years last past been in the business of manufacturing artificial mineral waters, and that he has lawfully manufactured and sold in siphons artificial mineral water made according to the analysis of vichy water as given by a chemist of recognized authority; that for more than fifty years and before this defendant entered into the manufacture of artificial mineral water, others had manufactured and sold, without restraint, throughout the civilized countries of the world artificial mineral waters, and amongst them, artificial vichy waters, which were sold as vichy waters manufactured according to the same analysis, and that such sale by others prior to the commencement of the manufacture of artificial mineral water by this defendant, and ever since, has been recognized as and is and was lawful, and permitted to be openly and notoriously carried on in this and other countries.

Fifth. And this defendant, further answering the bill of complaint, says: That even in the State of France it has been and still is lawful to manufacture and sell, and to sell artificial mineral water of any kind, and artificial vichy water in particular, under the name of Vichy, and that such right has been particularly recognized in French tribunals, namely, the manufacture of artificial mineral waters and their sale under the name of the natural water according to the analysis of which the artificial water is made.

Sixth. And this defendant, further answering the said bill of complaint, says: That he never has sold artificial vichy water as and for natural vichy water, nor in resemblance thereto, but that all his artificial products are in proper manner labeled and marked so that the purchaser shall know that the goods sold by this defendant are artificial mineral waters made according to certain accepted analyses, the analyses being given on defendant's labels, and in addition the defendant's trade-mark, his name and address and the name of the chemist whose analysis is followed.

16 Seventh. And this defendant, further answering, says: That his acts in regard to the manufacture and sale of artificial vichy water have been open, honorable and lawful, and in harmony with the universal custom recognized by law as right and proper in all civilized communities, and that this defendant has not done or permitted to be done any act whatsoever that could be construed as injurious to the rights of the complainants, if any they possess.

Eighth. This defendant, further answering on information and belief, says: That natural vichy water is being lawfully bottled and sold in France though not the property of the complainants herein, and that, therefore, the complainants are not exclusively entitled to the use of the term "Vichy" on natural mineral waters, apart from the fact that the complainants are not entitled to the exclusive use of the term "Vichy" or to any use of the term "Vichy" on artificial mineral water.

Ninth. This defendant, further answering, says: That the complainant, La Compagnie Fermiere de l'Etablissement Thermal de Vichy, in 1877, to wit, on the 7th day of August, 1877, registered in the Patent Office of the United States as their lawful trade-mark those parts of the labels used by the complainants on their bottles of natural vichy water which are the property of the said complainants, which registration is known as certificate No. 5014, and to which, for greater certianty, this defendant craves leave to refer: and this defendant shows that by said registration the said complainant, La Compagnie Fermiere de l'Etablissement Thermal de Vichy, claimed as its trade-mark or property all it had a right to claim, to wit, the picture of some buildings, and that it cannot, in view of its sworn declaration of exclusive ownership accompanying said registration, be now heard to allege that the Republic of
17 France has any title of ownership in any of said matters so registered or presented for registration.

Tenth. And this defendant, further answering, says: That the term "Vichy" is being largely used at this time, to the knowledge of the complainants, in connection with natural mineral waters not obtained from or through the complainants, and also on artificial mineral waters of many manufacturers and druggists all over this and other countries, and is lawfully so used and notoriously, and no effort has been made to suppress such use, and that the complainants have at all times admitted the right of these several manufacturers and others to the use of the term "Vichy" on such artificial and natural products.

Eleventh. And this defendant, further answering, says: That natural mineral water bottled from springs in and near Vichy and imported from France is sold in this country as vichy water, to the knowledge of the complainants, and is nevertheless not water to which either of the complainants at any time ever had claim of ownership, and that therefore the complainants are not the sole owners of the term "Vichy" as applied to mineral waters.

Twelfth. And this defendant, further answering said bill of complaint, says: That the vichy water bottled and sold by the com-

plainants, as alleged in the bill of complaint, is not the mineral water as it comes out of the spring of vichy, but is tainted and rendered impure by the growth therein of living micro-organisms in appalling numbers, and that the application of the term "Vichy" to such tainted water on the part of the complainants is a fraud upon the public and a misrepresentation, whereas the artificial vichy water prepared and bottled by this defendant for over thirty years last past is an aerated liquid charged with carbon-dioxide,
and thereby protected against the generation or growth of
18 organic impurities, and at all times pure, reliable and equal to the dictates of the analysis.

Thirteenth. This defendant, further answering said bill of complaint, says: That the artificial vichy water prepared and bottled by him has been for over thirty years last past and now is being put up in bottles known as "siphons," with labels of a distinct and peculiar character, differing in all respects from the bottles and labels used by the complainants in connection with their sale of the so-called natural vichy water, and that the distinction between said bottles and the labels of the complainants and the siphons and labels of this defendant is so marked and noticeable that the public and those who deal in such waters have never been and cannot be deceived into the belief that the product sold by the one is or may be the product of the other, and that it has always been understood by the trade, the medical profession and the public that the waters sold by this defendant are artificial waters and that the same are known and distinguished by defendant's trade-mark affixed to the labels that accompany the bottles containing said artificial mineral waters.

Wherefore, and for other good and divers reasons which he craves leave to submit when necessary, this defendant prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

CARL H. SCHULTZ, *Defendant.*

BRIESEN & KNAUTH,
Solicitors for Defendants, 229 *Broadway*,
New York City.

ARTHUR v. BRIESEN, *Of Counsel.*

19 UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, } *ss.:*

Carl H. Schultz, being duly sworn, deposes and says: That he is the defendant named in the foregoing answer subscribed by him; that he has read such answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to such matters he verily believes it to be true.

CARL H. SCHULTZ.

Subscribed and sworn to before me this 29th day of August, 1893.
[SEAL.] HARRY M. TURK,
Notary Public, N. Y. County.

Supplemental Answer to Amendments to Bill of Complaint. Filed February 7, 1894.

Circuit Court of the United States, Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIORE de l'Etablissement Thermal de Vichy, Complainants,
against
CARL H. SCHULTZ, Defendant.
} In Equity.

The supplemental answer of Carl H. Schultz, the above-named defendant, to the amendments to the complainants' bill of complaint.

20 This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit or exception which may be had or taken to the manifold errors, uncertainties, imperfections and insufficiencies of the said amendments to the bill of complaint, for answer thereto, or so much thereof as he is advised it is material or necessary to make answer to, answering says:

To the allegation inserted by amendment in the fifteenth paragraph of the original bill of complaint, this defendant, answering, says that he does not know and is not informed, except by the said amendment to the bill of complaint, respecting the same, and therefore denies the same, leaving the complainants to make such proof thereof as they are advised is material or necessary.

To the addition to the sixteenth paragraph of the original bill of complaint, which is contained in the amendment to the bill of complaint, this defendant, answering, says that it is not true that the mineral waters prepared and sold by him are made of deleterious substances, and it is not true that the said mineral waters prepared and sold by this defendant are not made of the true components of the genuine springs of which this defendant's waters are artificial reproductions.

To the allegations contained in the seventeenth paragraph of the original bill of complaint as amended by the said amendment to the bill, this defendant, answering, says that the same are not true, and he therefore denies the same.

Wherefore, and for other good and divers reasons which he craves leave to submit when necessary, this defendant prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

CARL H. SCHULTZ, *Defendant.*

BRIESEN & KNAUTH,
Solicitors for Defendant, 229 *Broadway, N. Y. City.*
A. v. BRIESEN, *Of Counsel.*

21 UNITED STATES OF AMERICA, *Southern District of New York, City and County of New York,* } *ss:*

Carl H. Schultz, being duly sworn, deposes and says: That he is the defendant named in the foregoing supplemental answer subscribed by him; that he has read such supplemental answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he verily believes it to be true.

CARL H. SCHULTZ.

Subscribed and sworn to before me this 6th day of February, 1894.

S. B. GOODALE,
Notary Public, N. Y. Co.

[SEAL.]

Replication. Filed March 5, 1894.

Circuit Court of the United States, Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Etablissement Thermal de Vichy, Complainants,
against
CARL H. SCHULTZ, Defendant.

22 The replication of La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, complainants, to the answer, and also to the answer to the amendments of the plaintiffs' bill, respectively, of Carl H. Schultz, defendant.

These repliants, saving and reserving unto themselves now and at all times hereafter, all and all manner *and* benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, and of the said answer to the said amendments of the plaintiffs' bill, for replication thereunto, say, that they will aver, maintain and prove their said bill of complaint and the amendments thereof to be true, certain and sufficient in law to be answered unto, and that the said respective answers of the said defendant are uncertain, untrue, and insufficient to be replied unto by these repliants. Without this, that any other matter or thing whatsoever in the said respective answers contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

Dated New York, March 5th, 1894.

JONES & GOVIN,
Solicitors for Complainants.

EDWARD K. JONES, *Of Counsel.*

23 *Supplemental Bill of Complaint. Filed February 26, 1894.*

Circuit Court of the United States, Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE Fermiere de l'Etablissement Thermal de Vichy, Plaintiffs,
against
CARL H. SCHULTZ, Defendant.
} In Equity. No. 5303.

To the honorable the judges of the circuit court of the United States for the southern district of New York, sitting in equity:

The above-named plaintiffs La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy bring and exhibit this their supplemental bill of complaint against the above-named defendant Carl H. Schultz, and thereupon your orators complain and say:

First. That your said orators have heretofore and on or about the 23d day of January, 1892, exhibited and filed in this court their certain original bill of complaint, wherein and whereby your said orators show that your orators are respectively the owner and the lessee of certain mineral springs at Vichy, France, and that the waters thereof are known and celebrated throughout the world and that the defendant is manufacturing artificial or counterfeit
24 mineral waters in imitation or purported imitation of the natural mineral waters drawn from the said springs of your said orators, and that he marks and sells the same as "vichy" waters, whereupon your orators pray in their said bill that the said defendant may be enjoined by the writ of injunction of this honorable court from the further continuance of the said infringement, and that the defendant may be also compelled to account to and with the plaintiffs for all the profits of the said infringement and to pay the same to the plaintiffs together with such damages as may be ascertained and awarded to them by a master or a jury upon a feigned issue.

Second. And your orators further show that, after stating the nature of the cause and describing the parties, and setting forth the sources of the plaintiffs' title and rights to the said springs, and alleging the wide repute thereof and their value, and the value and importance to the plaintiffs of the name "Vichy" and of the particular designation of the several springs belonging to your orators, the said bill proceeds to particularly charge the nature of the defendant's infringement in the "sixteenth" and "seventeenth" paragraphs or divisions of the said bill (as the same is amended by an order of this court duly made on the first day of February, 1894), in the following words and figures, viz:

Sixteenth. But, notwithstanding the foregoing facts, your orators allege and complain that the defendant Carl H. Schultz, without the license or consent of your orators or either of them, and at the city of New York, in the State of New York, and at other places

in the United States of America, is now, and, as your orators are informed and believe, for some time past has been, manufacturing counterfeit mineral waters in imitation or purported imitation of the mineral waters extracted from one of the said springs of
25 your orators, called "Grande Grille," and made of chemicals and other deleterious substances and not of the natural salts and other true components of the genuine spring belonging to your orators as aforesaid, and that he is selling, and, as your orators are informed and believe, has for some time past sold, the said counterfeit mineral waters in bottles and other receptables broadcast throughout the United States, as "vichy" waters, and especially as of the aforesaid spring particularly designated "Grand Grille," and to which counterfeit waters the said defendant applies labels, having thereon printed the word "Vichy" and the words "Grande Grille;" and that, in the application of the said names to bottles containing such counterfeit waters, the said defendant uses and has used two labels, which are pasted on opposite sides, one containing the words "Vichy" and "Grande Grille," together with the name and address of the defendant, and the other the formula of the alleged chemical elements or composition of the said waters in connection with other matter, the first mentioned of said labels being as follows:

And the other said label is as follows:

Carl Schultz's Vichy (GRANDE GRILLE,) BAUER PARTS IN 100,000			
Potassium Sulphate,	20.401	Ammonium Carbonate,	0,469
Sodium Sulphate,	11,771	Calcium Carbonate,	25,003
Sodium Phosphate,	0,422	Strontium Carbonate,	0,232
Sodium Chloride,	57,878	Magnesium Carbonate,	3,529
Sodium Bromide,	0,013	Iron and Manganese,	traces
Sodium Iodide,	0,003	Alumina,	0,078
Sodium Carbonate,	380,130	Silicic Acid,	6,406

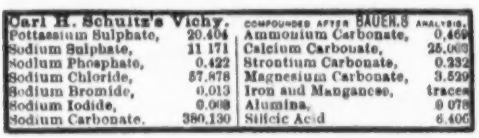
A bottle containing some of the said counterfeit mineral water made by the defendant, and labeled as just stated, will be produced at the final hearing of this cause.

26 Seventeenth. And your orators further show that the name "Bauer" printed upon the label last above set forth in connection with the said formula of chemical elements placed upon the said counterfeit waters of the defendant, is intended to represent, in addition to the representation implied by the use of the words "Vichy" and "Grande Grille," that the said counterfeit waters of the defendant are the natural and genuine waters of Vichy, and that they contain the chemical and therapeutic qualities of the aforesaid spring called "Grande Grille," whereas your orators allege that the said representations are untrue in fact, the said vichy waters of the "Grande Grille" spring being of a pronounced and established medical and chemical quality, and the said waters of

the defendant, on the other hand, besides being counterfeit, are not of the same, nor of substantially the same chemical composition, and that they are not of the same, nor of substantially the same medical and therapeutic action, as the said natural and genuine waters of your orators' said mineral spring at Vichy, by reason of which facts the rights of your orators to the exclusive use of the names "Vichy" and "Grande Grille" are not only invaded and infringed, as shown by the averments hereinbefore set forth, but the good name and reputation of the aforesaid natural and genuine mineral waters are misrepresented, disparaged and brought into ill repute, and the market therefor and sale thereof confused and disordered.

Third. And your orators further show that since the said bill of the plaintiffs was exhibited and filed as aforesaid the said defendant, in order to, if possible, escape from the consequences of the said infringement by makeshifts and evasions, and at the same time to continue and retain unto himself all the benefits and advan-
27 tages of the direct infringement charged in the said bill, and also to further infringe upon the plaintiffs' rights under a new guise, had modified and altered the labels upon his counterfeit waters as the same are set forth in the above-recited "sixteenth" paragraph or division of the said bill, so that the first one now reads as follows:

And the other said label now reads as follows:



Carl H. Schultz's Vichy.		COMPOUNDED AFTER BAUER'S ANALYSIS.	
Pottassium Sulphate,	20.404	Ammonium Carbonate,	0.469
Sodium Sulphate,	11 171	Calcium Carbonate,	25.003
Sodium Phosphate,	0.422	Strontium Carbonate,	0.232
Sodium Chloride,	57.878	Magnesium Carbonate,	3.529
Sodium Bromide,	0.013	Iron and Manganese,	traces
Sodium Iodide,	0.003	Alumina,	0 078
Sodium Carbonate.	380.130	Silicic Acid	6.406

Fourth. And your orators further allege that, in view of the infringement charged in their said bill, which was persisted in and continued by the defendant for a long period of time, the said defendant had before making the alteration in his labels, as above shown, acquired a large sale and custom for his counterfeit waters under and by the false and fraudulent representations contained upon the said labels, and that the said alteration is but a device of cunning and evasion and attracts no attention from the customers of the defendant's said counterfeit waters, or if the same attracts attention at all, the mod-fications thereof are not substantial, nor are they sufficiently clear to prevent continued deception; and your orators further allege that even if the said labels were not in fact still deceptive and misleading, in view of the facts set forth above

and in the plaintiffs' said bill, yet your orators allege that the action of the defendant in making artificial mineral waters at all in imitation, or purported imitation of the genuine waters of the
28 plaintiffs and applying to them the name "Vichy" or other indicia referring to the plaintiffs' spring, is unlawful and fraudulent and a violation of the rights of the plaintiffs to the use of the name "Vichy" and other designations of their springs.

To the end, therefore, that the said defendant may, if he can, show why your orators should not have the relief herein and in their said original bill prayed for, and that he may, according to his best and utmost knowledge, remembrance, information and belief, full, true, direct answer make (but not upon oath, which is hereby waived) to all and singular the premises.

Your orators pray that the defendant may be ordered to answer the premises, and that he may be decreed to account for and pay over to your orators all gains and profits realized from his unlawful infringement above set forth, together with such damages as may have accrued to the plaintiffs, which damages your orators pray may be ascertained by a jury on a feigned issue according to the practice of this honorable court, and also that the said defendant may be restrained by an injunction to be issued out of this honorable court from making and selling artificial and counterfeit mineral waters in imitation or purported imitation of the natural mineral waters of the plaintiffs' springs, as above and in the said bill set forth, and also from using the name "Vichy" and other indicia referring in any manner to the plaintiffs' said springs or either of them; and your orators also pray that they may have such other relief in the premises as to your honors may seem meet.

JONES & GOVIN,
Solicitors for Plaintiffs.

EDWARD K. JONES, *Of Counsel.*

29 UNITED STATES OF AMERICA, }
Southern District of New York, } *ss.:*

Edward K. Jones, being duly sworn, deposes and says:

That he is one of the solicitors for the above-named plaintiffs; that he has read the foregoing supplemental bill and knows the contents thereof; and that the allegations therein contained are true to the best of deponent's knowledge, information and belief.

And deponent further deposes and says that the reason why this verification is not made by the plaintiffs in person is that neither of them, nor any officer thereof, is present within the southern district of New York, but that the said plaintiffs and all the officers thereof are in the city of Paris, in the Republic of France.

And deponent further deposes and says that all the matters stated in the foregoing supplemental bill are within deponent's personal knowledge, the same having been acquired by him in the progress of this cause and from an inspection of the defendant's labels as exhibited upon a bottle or siphon of the defendant's so-called mineral waters, which has come under the deponent's personal notice.

And deponent further deposes and says: That the labels of the defendant exhibited in the said supplemental bill, are exact copies of the defendant's labels, as far as they can be made from the printer's font. There is, however, a very small character between the letters "C P M S" at the foot of the labels upon which those letters appear, which cannot be produced from the printer's font. This is a small design of the same height as the letters themselves, and represents some kind of character or structure which the deponent cannot make out; but as far as the same can be deciphered it is a wire screen or cage. The same is not reproduced, because in order to do so
30 a wood cut thereof would have to be made; and, as the same is not deemed material to the case, it is omitted.

EDWARD K. JONES.

Sworn to and subscribed before me this 26th day of February, 1894.

FREDERICK KOPF,
[SEAL.] *Notary Public* (34), *N. Y. Co.*

Answer to Supplemental Bill. Filed April 2, 1894.

Circuit Court of the United States, Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE Fermiere de l'Etablissement Thermal de Vichy, Complainants,
against
CARL H. SCHULTZ, Defendant.
} In Equity.

The answer of Carl H. Schultz, defendant, to the supplemental bill of complaint of La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy.

This defendant, answering said complainants' supplemental bill of complaint, says:

First. He admits that the said complainants, on or about the 23d day of January, 1892, exhibited and filed in this court their
31 certain original bill of complaint, substantially as alleged in the first paragraph of the supplemental bill, excepting, however, that the original bill made no reference in terms to any artificial mineral water made by this defendant, which reference, for the first time, occurs in the first paragraph of said supplemental bill.

Second. He admits that the said bill of complaint, as amended, contained clauses numbered "sixteenth" and "seventeenth" to the same tenor and effect as alleged in the second paragraph of the said supplemental bill of complaint.

Third. He admits that he has, since the filing of the said original bill of complaint, changed the labels in the sixteenth paragraph thereof reproduced, but denies that the said change was made for the reasons stated in the third paragraph of the said supplemental bill of complaint, and denies that the first and also the second labels ex-

hibited in the third paragraph of the said supplemental bill are true and correct representations of the labels used by this defendant, and he alleges that important and material parts of the said labels are omitted from said supplemental bill, and that the parts so omitted are well-known characteristics of defendant's labels and constitute one of the means whereby his products are identified in the trade.

Fourth. He denies the allegations contained in the fourth paragraph of the said supplemental bill of complaint.

And this defendant denies all and all manner of unlawful acts wherewith he is by the said supplemental bill charged. All which matters and things this defendant is ready and willing to prove as this honorable court shall direct, and he humbly prays, as he
32 has already prayed, to be hence dismissed, with his reasonable costs, and charges in this behalf most wrongfully sustained.

CARL H. SCHULTZ, *Defendant.*

BRIESEN & KNAUTH,
Solicitors for Defendant, 229 *Broadway, New York, N. Y.*
ARTHUR v. BRIESEN, *Of Counsel.*

UNITED STATES OF AMERICA,
City of Green Cove Springs, County of Clay, } *ss:*
State of Florida,

Carl H. Schultz, being duly sworn, deposes and says: That he is the defendant named in the foregoing answer subscribed by him; that he has read such answer and knows the contents thereof; that the same is true of his knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to such matters he verily believes it to be true.

CARL H. SCHULTZ.

Subscribed and sworn to before me this 12th day of March, 1894.

C. FABIAN LAW,
[SEAL.] *Ntry. Pub., State at Large.*

33 *Replication to Answer to Supplemental Bill. Filed May* 5, 1894.

Circuit Court of the United States, Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Etablissement Thermal de Vichy, Complainants,
against
CARL H. SCHULTZ, Defendant.

The replication of La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, complainants, to the answer of the defendant, Carl H. Schultz, to the supplemental bill of the said complainants.

These repliants saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of

exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver, maintain and prove their said supplemental bill of complaint to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided,
34 traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly pray as in and by their said supplemental bill they have already prayed.

Dated New York, May 5, 1894.

JONES & GOVIN,
Solicitors for Complainants.

EDWARD K. JONES, *Of Counsel.*

Bill of Revivor. Filed September 17, 1897.

Circuit Court of the United States, Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT Thermal de Vichy, Complainants,
against
LOUISE SCHULTZ, as Executrix of the Last Will and Testament of Carl H. Schultz, Deceased, Defendant.

To the honorable the judge of the circuit court of the United States for the southern district of New York:

The above-named complainants, La Republique Francaise
35 and La Campagnie Fermiere de l'Etablissement Thermal de Vichy, bring and exhibit this their bill of revivor against Louise Schultz, the executrix of the last will and testament of Carl H. Schultz, and thereupon your orators allege as follows:

First. That on or about the 23d day of January, 1892, your orators duly filed and exhibited before this honorable court their certain bill of complaint against the above-named Carl H. Schultz, wherein and whereby, upon the facts therein alleged, your orators prayed, among other things, that it might please this honorable court to grant to them its respective writs of provisional and final injunction to restrain the said Carl H. Schultz from the use of the name "Vichy" upon factitious and counterfeit mineral waters made by the said Carl H. Schultz, and for an accounting and damages, as in and by the said bill of complaint appears, and to which your orators refer for greater certainty and particularity.

Second. That the usual process of subpœna, according to the rules and practice of this honorable court, was duly issued upon the filing of the said bill, and the said Carl H. Schultz thereafter appeared, and after other pleadings in the cause the said Carl H. Schultz there-

after filed his several answers to the said bill and to certain amendments thereof and also to your orators' supplementary bill in the said behalf, to all of which pleadings, which are on file in the office of the clerk of this honorable court, your orators refer.

Third. That after the said cause came to issue your orators proceeded to take various and sundry depositions and other proofs in support of the said bill and amendments and its said supple-
36 mental bill, which depositions and other proofs are now on file in this court.

Fourth. That on or about the 29th day of May, 1897, as your orators are informed and believe, the said Carl H. Schultz departed this life leaving a last will and testament, wherein and whereunder the above-named Louise Schultz, his widow, was and is appointed sole executrix thereof, and that the said executrix has since filed and offered the said last will and testament for probate in the office of the surrogates of the city and county of New York, and that the said will was thereafter duly admitted to probate and letters testamentary issued to the said executrix on or about the 17th day of August, 1897.

Your orators therefore pray that the said cause be revived against the said Louise Schultz, as executrix of the said Carl H. Schultz, and stand with respect to the said party as it was with respect to the said Carl H. Schultz, at the time of the abatement thereof as above shown, and that it may please this honorable court to cause to be issued the proper process of subpœna requiring the above-named Louise Schultz, as executrix of the said last will and testament of the said Carl H. Schultz, to show cause, if any she have, why the said cause should not be revived, and that your orators may have such other and further order or relief in the premises as may be equitable and just.

JONES & GOVIN,
Solicitors for Complainants.

EDWARD K. JONES, *Of Counsel.*

37 UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

Edward K. Jones, being duly sworn, doth depose and say:

That he is one of the solicitors and of counsel for the above-named complainants; that he has read the foregoing bill of revivor and knows the contents thereof, and that the allegations therein contained are true to the best of deponent's knowledge.

EDWARD K. JONES.

Sworn to and subscribed before me this 17th day of September, 1897.

FREDERICK KOPF,
Notary Public (74), *N. Y. Co.*

38 At a stated term of the circuit court of the United States for the southern district of New York, held at the United States court-house and post-office building, in the city of New York, on the 18th day of November, 1897.

Present: Hon. E. Henry Lacombe, U. S. circuit judge.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Etablissement Thermal de Vichy, Complainants,
against
LOUISE SCHULTZ, as Executrix of the Last Will and Testament of Carl H. Schultz, Deceased, Defendant.

A motion having been made in behalf of the complainants in the above-entitled cause for an order striking out the purported answer of the above-named Louise Schultz as executrix to the bill of revivor filed in this cause on or about the 17th day of September, 1897, and directing the cause to stand revived as of the rule day, which occurred on the first Monday of October, 1897, and for such other and further order or relief in the premises as may be just, and the said motion coming on to be heard, and the court having heard
Edward K. Jones, Esq., counsel for the complainants, in sup-
39 port thereof, and Antonio Knauth, Esq., counsel for the defendant, in opposition;

Now, on reading and filing notice of the above motion and upon the bill of revivor herein and upon all the pleadings and proceedings herein, and on motion of Messrs. Jones & Govin, solicitors for the complainants herein, it is

Ordered, that the said motion be and the same is hereby granted in all respects, and it is

Further ordered, that the purported answer of the above-named Louise Schultz, as executrix, to the said bill of revivor filed in her behalf in this cause on or about the 4th day of October, 1897, be and the same is hereby stricken out, and that the cause of the above-named complainants against Carl H. Schultz, deceased, stand revived against the said Louise Schultz as executrix of the last will and testament of the said Carl H. Schultz, deceased, as of the rule day, which occurred on the first Monday of October, 1897, in all respects as the same stood against the said Carl H. Schultz at the time of the abatement thereof.

E. H. LACOMBE,
U. S. Circuit Judge.

40 *Order for Commission. Filed December* 20, 1895.

At a stated term of the circuit court of the United States for the southern district of New York, held at the United States court-house, in the city of New York, on the 20th day of December, 1895.

Present: Hon. E. Henry Lacombe, circuit judge.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Etablissement Thermal de Vichy, Plaintiff-,
against
CARL H. SCHULTZ, Defendant.

An order having been heretofore made by one of the judges of this court requiring the defendant, or his solicitors, to show cause

why an order should not be made for the issue of a commission to a commissioner in the city of Paris, France, to take the depositions upon written interrogatories of certain witnesses for the complainants and for certain other orders with respect to the testimony to be taken herein as in the said order to show cause are more particularly specified, and the said order to show cause having come on for argument,

Now, upon the reading and filing of the said order to show
41 cause, and after hearing Edward K. Jones, Esq., in support of the same, and Antonio Knauth, Esq., in opposition thereto, it is

Ordered, that the order heretofore made in this cause appointing a special examiner in the city of Paris to take depositions on the part of the complainants, orally, and the further order limiting and regulating the examination of witnesses thereunder, be and the same are hereby vacated and set aside.

And it is further ordered, that a commission in usual form be issued out of and under the seal of this court, to Newton B. Eustis, Esq., second secretary of the United States embassy at Paris, authorizing and appointing the said commissioner to take the depositions upon written interrogatories of all the witnesses named in the said order to show cause, viz.: of Charles Fere, No. 8 Boulevard Montmartre, Paris; Emile Dietz, of the town of Vichy, France; Le Comte de Maillard Marefy, No. 4 Avenue du Coq, Paris; Edward Bougean, No. 3 Square du Croisic, Paris, and of Eugene Pouillet, No. 10 Université, Paris; and also of any additional witness or witnesses whom the complainant may desire to examine while the said commission shall be in process of execution.

And it is further ordered, that the matter of the defendant's time to take testimony is reserved under advisement until the return of the said commission, and that when this court is notified by either side that said commission is returned, it will fix the time for closing proofs of both sides irrespective of any further orders or consents, and with the object of expediting the hearing of the said cause.

And it is further ordered, that complainants' solicitors shall serve upon the solicitors for the defendant a copy of their proposed direct interrogatories to each of the aforementioned witnesses, and that within ten days thereafter the defendant's solicitors shall serve upon the solicitors for the complainants copies of any cross-interrogatories which they may desire to propound.

And it is further ordered, that complainants' time to close
42 the proofs in their behalf be, and the same is hereby extended until the execution and return of the said commission.

December 19, 1895.

E. HENRY LACOMBE,
U. S. Circuit Judge.

United States Circuit Court, Southern District of New York.

LA REPUBLIQUE FRANCAISE ET AL.
vs.
LOUISE SCHULTZ, Executrix.

It is hereby stipulated and agreed between the solicitors for the respective parties hereto that the printing in the French language of the answers to the interrogatories propounded to Edward Jeramie, Charles Pierre, Ch. Fere, Louis Charles Marie Aguillon, Edward Bonjean, Emile Gilbert Dietz, Eugene Pouillet, witnesses on behalf of complainants, be and the same is hereby dispensed with.

And it is further agreed that in printing the depositions of the said witnesses each interrogatory shall be followed by the answer thereto.

ROWLAND COX,
Solicitor for Complainants.
BRIESEN & KNAUTH,
Solicitors for Defendant.

Ordered accordingly.
E. H. LACOMBE,
U. S. Circuit Judge.

(Words and sentences in the answers to the interrogatories following, if enclosed in brackets, are corrected or omitted translations of the original; see stipulation, page —.)

43 Circuit Court of the United States, Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Etablissement Thermal de Vichy, Plaintiffs,
against
CARL H. SCHULTZ, Defendant.

"All the following interrogatories are settled subject to all legal objections and exceptions to be taken at the trial, except as to form of question."

E. H. LACOMBE, *U. S. C. J.*

"The foregoing cross-interrogatories settled and allowed subject to all legal objections and exceptions at the trial, except as to the form of the question."

E. HENRY LACOMBE,
U. S. Circuit Judge.

Interrogatories to be propounded to M. Aguillon, inspector general of mines of the department of the centre of the Republic of France, a witness called on behalf of the above-named plaintiffs under the above-named commission in the above-entitled cause.

EMBASSY OF THE UNITED STATES, *Paris, France,* } *ss:*

I, Newton B. Eustis, do solemnly swear that I will truly
44 and faithfully interpret the oath and interrogatories to be administered to Louis Charles Marie Agullion, a witness now to be examined out of the English language into the French language, and that I will truly and faithfully interpret the answers of the said Louis Charles Marie Aguillon thereto out of the French language into the English language.

NEWTON B. EUSTIS.

Sworn to and subscribed before me this 2d day of April, 1897.

HENRY VIGNAUD,
[SEAL.] *Sec. United States Embassy.*

AGUILLON, LOUIS CHARLES MARIE, residing at 71 Rue Faubourg St. Honore, Paris, general inspector of the second class to the national corps of mines, aged — years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed and examined on the part of the plaintiffs, doth depose and say as follows:

Q. 1. Please state your name, age, residence and occupation, together with the full title or designation of your official position.

A. Louis Charles Marie Aguillon, 71 Rue Faubourg St. Honore, inspector general of second class to the national corps of mines.

Q. 2. To what department of the administration of the French Republic does the bureau of which you are chief belong?

A. Ministry of public works, department of mines.

Q. 3. State whether or not you have been designated under the authority of the ministry of the interior of France to testify to such facts in this case as may be called for directly on the part of the French government?

A. I have been designated upon the demand of the ministry of the interior (home department) by the minister of public works to give testimony in the case brought by the French State and the Compagnie Fermiere of Vichy against Carl Schultz.

45 Q. 4. What is the general nature of your duties as inspector general of mines?

A. As general inspector I am charged with the inspection of the service of mines in the central division, which comprises the central departments of France, among which is Allier where Vichy is situated; Puy de Dôme Loire and Nièvre which all three possess numerous mineral springs and which are reputed under divers titles.

As general inspector I exercise for my division the following duties:

I verify by periodical visits the way in which the mining engi

neers and the agents under their orders carry out on the spot their duties of supervision.

I give advice to the competent ministers upon all business in which they have to decide and on which they think it advisable to consult me.

I sit at the general council of mines to there deliberate on all business sent back to it by the competent ministers for its examination.

Q. 5. State whether or not you have any official duty in connection with the supervision and control of natural mineral springs in France? If so, state what those duties are?

A. I do not exercise any direct supervision nor immediate control over mineral springs in France, but by the duties which I discharge according to what I said in my reply to question 4, I control in my division the manner in which the mining engineers carry out the legal supervision over springs worked for medicinal purposes which devolves upon them; in this character, I can give them advice, I do not give them orders; being inspector and not chief of the service. I also give my opinion in special reports, and I deliberate in the general council of mines, as I have said in the 4th answer, on all business of mineral waters which is sent back for my personal examination or for that of the general council of mines.

Q. 6. State whether or not under the law or regulations by public authority in France provision is made for the dedica-
46 tion of certain mineral springs to the use of the public, and if so, please annex copies of such legislative or other enactments as may exist upon the subject?

A. From a legal and regular point of view three categories should be recognized in the mineral springs destined for public use as medicinal waters.

No spring may be worked for medicinal purposes or be made use of under this head for outside sale for consumption or application on the spot, without an authorization given by the administration, at present by the minister of the interior. Among these authorized springs there are some which at the request of their proprietors can, by reason of their importance and of their situation be declared of public interest, which attributes to the proprietor of the springs additional rights and duties. At the request of the proprietor also, the springs declared to be of public interest can be furnished with a perimeter of protection, which confers on the owner of the spring further rights and duties. The rules for the authorization were given by a royal ordinance of June 18, 1823; those for the declaration of public interest and for the perimeter of protection by a law of the 14th of July, 1856, modified by the law of the 12th of February, 1883, and completed by the decrees of September 8, 1856, January 28, 1860, and April 11, 1888; this last modifying a detail of the decree of September 8, 1856. The text of all these laws are hereto annexed Exhibits R, S, T, U, V, W.

Q. 7. What is the result or effect of establishing what is called a perimeter of protection with respect to a mineral spring, and in

what cases and under what authority are such perimeters of protection established?

A. (1) In a perimeter of protection all the owners of the surface whose grounds are comprised within the said perimeter are forbidden to make soundings, wells or any other subterranean work without an authorization of the administration.

47 These owners may even be bound over not to make diggings or open-air excavations except after declaration.

The authorized subterraneous works and open-air works which have been declared may be afterwards stopped, filled up or destroyed at the request and expense of the owner of the mineral spring if it is proved that their result is injurious to the yield or composition of the spring to which the perimeter of protection has been accorded. The object in view in establishing a perimeter of protection is the *preservation* of the spring for which the perimeter is constituted; the result is generally attained and the end secured.

(2.) A perimeter of protection is accorded upon the request of the owner for springs which justify it as well by their importance as by their situation, especially on account of the dangers to which neighboring works might expose them.

The perimeter is granted after a public inquiry by a decree of the president of the French Republic.

Q. 8. State whether or not the French State is the owner or proprietor of any natural mineral springs of Vichy, in the department of the Allier, France, and if so, please also state their various particular designations, their relative locations, their respective qualities, their several dates of discovery and the manner in which they have been acquired by the French State. And in answering this interrogatory you are at liberty to refer to and annex copies or extracts from any records in the public archives of the French State relative to or bearing upon any of the matters presently inquired of?

A. The French State is proprietor at Vichy—I mean by that, in the commune of Vichy—of the following springs: Grand-Grille, Puits-Carre (or Chomel), Lucas, l'Hopital, the Parc, Celestins, it being understood that under this last appellation is comprised, not one spring alone forming an entity clearly characterized, but a group of springs very close to each other and placed under

48 exactly similar conditions. The respective position of these six springs is shown upon the adjoined plan, Exhibit X. All these springs enter into the category of "bi-carbonatees sodiques," with *with* the exception of the Parc and the Celestins, which are cold springs. All the other springs are warm. In the following title, Exhibit Y, I give their composition and temperature after the investigations made in 1881 by Mr. Willen, professor of chemistry to the faculty of science of Lille, for the revision of the mineral waters annual of France (Annuaire des Eaux Minerales) published by the administration. These investigations are the most recent, and those the results of which appear to be most reliable.

I am ignorant of the date of the discovery of all the aforemen-

tioned springs belonging to the State with the exception of that of the Parc and of what I am about to say for the Celestins. The Puits Carre, the Grande Grille, Lucas and Hopital are in fact springs which appear to have always existed at the surface of the ground, or whose points of emergence at all events appear to have been discovered from time immemorial. The spring of the Parc is, on the contrary, the result of a sounding executed in 1843–1844. The group of the Celestins is known from time immemorial; but of the points of emergence actually utilized there is one, the Neo Celestins, the discovery of which goes back to 1870. With the exception of the Parc spring I am also personally unaware in what manner the State formally became owner of these springs. History informs us that their ownership by the State is very ancient. It is certain that they already belonged to it in 1853, at which date it leased them to the present Compagnie Fermiere by an agreement approved by the law of June 11, 1853. As to the Parc spring, it was ceded at this date to the State by the creators of this company, as is established by the convention which I have just cited.

Q. 9. State whether or not there are any natural mineral
49 springs in the town or commune of Vichy other than these owned by the French State?

Q. 10. What is the difference, if any, between a natural and an artificial spring?

Answer to both questions: I cannot reply without making a distinction between the categories of mineral springs.

By mineral spring is understood a point of emergence from which the water flows in the state it is found in the ground. According to this, all water thus coming from a mineral spring will be *natural* water in opposition to *artificial* water, which is obtained either by mixing together by a manufacturing operation, natural waters of various natures, or by adding to a natural water solid or liquid products. The mineral spring and the natural water flowing from it being thus very clearly defined, respectively, a distinction of another nature may be made between the springs.

The ones [some] allow their waters to flow from points where the outflow has existed from time immemorial without its appearing that the hand of man has been occasionally necessary to help it forth. The others only come into being from borings or from wells similarly to artesian springs.

Sometimes, as in the present instance, these springs have been called *artificial*;—it is necessary to understand fully the meaning of this word. If it is desired to point out by this that they only come into being after a preliminary work of art, well and good; but their waters are none the less natural mineral waters which do not differ in principal from the waters spouting from the springs of the other category and in consequence very different, the one and the other [both], from the artificial mineral waters defined as above. This being clearly explained, I can reply that all the mineral springs existing at Vichy, that is to say, in the commune of Vichy, outside of those belonging to the State, are springs of that category called artificial mineral springs but having natural waters.

Q. 11. State whether or not there are any artificial mineral springs at Vichy; and if so, state their several dates of origin and the names of their several proprietors, if you know them?

A. Among the springs of the category above cited which are actually being worked I may mention:

1. The Lardy spring, originating from a boring made in 1844.

2. The Larbaud (Longues Vignes) spring, originating from a boring made in 1856.

These first two springs are worked by the Compagnie Generale des Eaux Minerales et des Bains de Mer.

3. The Prunelle spring, belonging to M. N. Larbaud, found when excavating a well in 1873.

4. The Dubois spring, worked by M. Dubois, discovered in 1874, but authorized for medicinal use only in 1887.

5. The Etoile spring, bored in 1892, by M. Baudot, who works it.

6. The Genereuse spring, bored for in 1894 by MM. Planchin & Bardiaux.

Q. 12. State whether or not any or all of the natural mineral springs of the French State at Vichy have been dedicated to the public use and perimeters of protection established with respect to them; and if so, state the date of such dedication to the public use and annex a copy or copies of any records or public acts in that behalf.

A. All the springs, without distinction, of which the State is proprietor at Vichy have been declared of public interest by a decree of the 24th of January, 1861; a perimeter of protection was granted them by decree of the 17th of May, 1874. This perimeter was executed by a decree of the 8th of August, 1895. The text of these decrees is appended (Exhibits Z, A A, B B).

Q. 13. State whether or not any mineral springs in the town or commune of Vichy other than those of the French State have
51 been dedicated to the public use and perimeters of protection established with respect to them, and also whether or not such other mineral springs are lawfully entitled to the benefit of any perimeter of protection established with respect to any mineral spring of the State?

A. None of the springs existing at Vichy outside of those belonging to the State have been declared of public interest, and therefore none have been furnished with a perimeter of protection.

These springs, although situated within the perimeter of the State, do not profit legally by the advantages which this perimeter confers on the springs for which it was created.

Q. 14. What measures, if any, other than the supervision exercised by yourself, does the French State take to protect and control its property in the mineral springs owned by it at Vichy?

A. In order to protect its rights of proprietorship to the mineral springs of Vichy, the State may take all actions and use all the measures that the law opens to any proprietor in a parallel case.

Besides these measures of general order and in an order of ideas perhaps a little different, the State has exceptionally reserved to itself in its agreement of 1853 with the Compagnie Fermiere a right

of control over the drawing of the waters, with the view of being able to guarantee their regularity and their authenticity.

Q. 15. Do you in your official capacity, exercise any control or take any measures or is there any control or are there any measures of supervision exercised by any public authority in France to protect any other mineral springs in the town or commune of Vichy than those dedicated to the public and belonging to the French State? If so, please state such measures of protection or supervision and point out how they differ, if at all, from the measures taken with respect to those mineral springs dedicated to the public use and protected by perimeters of protection?

A. In the current working there is not in principle any
52 difference between the supervision exercised by the State over the springs simply authorized and those which have been declared of public interest and provided with a perimeter of protection. There was no difference between them in fact except on the subject of works done by a third party which would affect or simply menace their preservation.

In this case the administration would not intervene on behalf of the simply authorized springs; it would, on the contrary, intervene on demand of the owners of the spring to protect one of those of the other category.

Q. 16. State whether or not there are any mineral springs in France whose waters are imitated by waters produced by factitious or manufactured ingredients and processes, and to which the proper name of the natural mineral spring is applied?

A. I do not know of a mineral spring in France the waters of which are imitated by artificial waters sold under the name of the natural water.

Q. 17. State whether or not there is any artificial or manufactured mineral water made and sold in France by the name of "vichy" water or by the designation of any particular spring at Vichy?

A. I do not know of artificial mineral water sold under the name of "vichy" water or under the name of any one of the Vichy springs.

Last question: Do you know of any other matter or thing of benefit or advantage to the complainants in this suit? If so, state the same fully as if you were specifically interrogated thereunto?

A. I have nothing to add to my evidence.

Cross-interrogatories to be propounded to M. Aguillon, a witness called on behalf of the complainants under the commission to Newton B. Eustis, Esq., second secretary of the United States embassy at Paris.

X Q. 1. State whether or not the authority of the minister of the interior of France to testify in this case, referred to in the
53 3d interrogatory, was or is in writing? If so, please produce the same and annex it to your deposition, or annex a certified copy thereof if you cannot part with the original?

A. I produce herewith the original of the order of the 15th of

February, 1896, of the minister of public works, under whom I am, order given to me on demand of the minister of the interior (home department), (Exhibit C C).

X Q. 2. What is a perimeter of protection?

A. The perimeter of protection allotted to a mineral spring forms around this spring a closed polygon in the interior of which subterranean works by soundings, wells, or otherwise, may not be effected without an authorization of the administration.

Notwithstanding this authorization, the works can be stopped and destroyed if it is recognized that they injure the spring. These measures are taken with the object of assuring the preservation of the mineral spring, that is to say, the maintenance of its output [and its composition].

X Q. 3. Is a perimeter of protection based on statute or ordinance? If so, annex certified copies of all such statutes and ordinances under which a perimeter of protection may be established as testified to by you in answer to the direct interrogatories?

A. The perimeters of protection are allotted in virtue of the law of the 14th of July, 1856, perfected by the decrees of September 8, 1856, and April 11, 1888 (Exhibits S, T, V).

I have already furnished the text of these.

X Q. 4. Is the ownership of a spring in France changed by dedicating the same to the use of the public?

A. The declaration of public interest leaves the right of the owner of the spring intact under the two following reservations:

He may not undertake new works upon the spring without having declared them and having, if necessary, obtained the authorization for them.

Besides, he could be expropriated if the spring was worked in a way threatening its preservation or the necessities of the public health.

54 X Q. 5. Does such dedication take away the right of the one dedicating the spring to bottle its waters and sell the same in the market?

A. The owner of a spring declared of public interest is not liable under this title to any particular hindrance from putting his waters in bottles and selling them.

X Q. 6. Is Vichy a town, city, county, or district?

A. Vichy is a chief canton town of the department of Allier.

X Q. 7. What is the geographical location and extent of Vichy? Please annex to your answer a map or chart showing the boundaries of Vichy and its location?

A. Vichy is situated in 1° 5′ and 14″ east longitude of Paris, and in 46° 7′ 26″ north latitude. The extent of the commune of Vichy is 506 hectares. That of the agglomeration, which extends itself each year, is 135 hectares. Hereto is joined a map showing the situation (Exhibit D D).

X Q. 8. State what parts of your answer to the 8th interrogatory are based on your personal knowledge as distinguished from knowledge derived from books, documents, records or communications from others?

A. Having there made numerous journeys I am personally acquainted with all the State springs at Vichy. All information on the date of their discovery and their composition and all other indications come to me second hand.

X Q. 9. How do you know that the French State is the owner of any mineral springs of Vichy?

A. The French State is certainly owner of the mineral springs of Vichy which I have mentioned, because it has possessed them without any contestation since 1853, date on which by public act it leased them to the company which still works them. There is consequently more than the thirty years prescription which is sufficient to constitute ownership. I produce herewith the convention of 1853 and the law which approved it (Exhibit E E).

X Q. 10. Do not the Bourbon and Orleans families make
55 claim to the whole property of the State of France?

A. It appears impossible to me that the Bourbons and d'Orleans claim the ownership of all the possessions forming actually the property of the State. At all events, I have no knowledge of these pretenders.

X Q. 11. Have they ever been divested of their rights to the property of the State of France in a legal manner?

A. The domain of the State has no relation to the domain which may constitute the property of the Bourbon and d'Orleans families.

X Q. 12. Are they not solely prevented by the superior force of the present government of France from taking possession of all the property of the State formerly owned by them, including those springs of Vichy which are now claimed to be owned by the Republic of France?

A. It is not by force, but by right that these families are prevented from taking back, in principle, the property belonging to the State and more particularly the Vichy springs. It is possible that these families may be at law with the State for the ownership of certain properties; this is certainly not the case as regards the Vichy springs, to which the State's ownership is legally established by its possession of more than thirty years.

X Q. 13. Have you annexed to your answer to the 8th interrogatory all records or extracts from the same which you claim proved the assertions made in your answer to said interrogatory?

A. It seemed useless to me to add any rider to my reply to the 8th question of the interrogatory, finding that I could dispense with it without injuring the precision of my replies.

X Q. 14. If you have not already done so, please do so now, and have the said copies or extracts from records properly authenticated in the manner in which official documents are usually authenticated?

A. I cannot furnish any copy or extract as I do not invoke any in my answer, if it is not the convention and the law of 1853, of which I have produced the text.

56 X Q. 15. How do you know the respective qualities and dates of discovery of the springs referred to in your 8th answer to the 8th interrogatory?

A. The Vichy waters have been the subject of numerous publications from the point of view either [both] of their composition or [and] of their history.

As to their composition, I have indicated as the best reference, the studies of Mr. Willen, published either in the "Annual of the Mineral Waters of France" (Annuaire des Eaux Minerales de la France) or in the work of Messrs. Jacquot & Willen, "Mineral Waters of France" (Les Eaux Minerales de la France), Paris, Baudry, 1894, 1 vol. in 8°. For the dates of the discoveries I have made use of the most authentic memoir, that published by Mr. Voisen in the "Annals des Mines" of November, December, 1879.

I have completed the facts posterior to this publication by information gathered from engineers of the mines placed under my inspection, who have the supervision of the Vichy waters among their functions.

X Q. 16. Does not the quality of these springs, to wit, their chemical constituents, change from time to time? If so, state what changes have taken place in each spring from time to time and how the analysis of the water differed?

A. I do not know that changes of intrinsic composition have ever been found in the waters of Vichy.

X Q. 17. State at what different temperatures the springs referred to in the last cross-interrogatory come out of the earth?

A. I have already given in reply to question 8 of the interrogatory the temperatures taken in 1881 by Mr. Willen of the waters of the State. These dates being among the most recent and those offering the best guarantees. I repeat them here:

(Table same as in French.)

Grande-Grille 41° 8.	Puits-Chomel 44° 0.
Lucas 28° 4.	Source de l'Hopital 34".
Celestins (Grotte) 14°.	Anciens Celestins 13° 8.
Neo. Celestins 16° 4.	Parc 16° 3.

57 X Q. 18. State whether the waters of the different springs at Vichy are bottled and sold or which of them are and under what names they are sold, and annex hereto copies of the labels under which these different springs are sold in the market?

A. Of the various springs belonging to the State at Vichy those of the following are bottled for sale: Grande-Grille, L'Hopital, the Celestins, Le Parc. Hereto are annexed the different labels of these various springs (Exhibits F F, G G, H H, I I).

X Q. 19. Is the water of any of these springs specifically known as "vichy" water or is this a name collectively applied to them all?

A. The name "vichy water" is applied indiscriminately as a generic term to each of the aforementioned springs.

X Q. 20. State the names and location of these natural mineral springs at Vichy which are not owned by the French Republic; also the names of the several parties owning the same?

X Q. 21. State whether or not the water from the springs referred to in the last cross-interrogatory is bottled and sold in the market

and under what names or labels such waters are sold? Please annex copies of any labels under which such waters are sold in the market?

X Q. 22. State what the chemical composition of the artificial mineral springs at Vichy is referred to by you in your answer to the 11th interrogatory, and whether you have any personal knowledge of the production of these springs and the composition of the waters of these springs?

X Q. 23. State whether or not the water of these artificial springs referred to by you in answer to the 11th interrogatory is bottled and sold and under what name or names and labels the same is sold in the market? Please annex copies of the labels referred to in your answer to this cross-interrogatory?

Answer to X Qs. 20, 21, 22 and 23. If by *natural* springs it is understood, as I have explained, springs which would have existed before the borings or the wells by which they now bubble
58 up or are worked, I have already said that none of these exist at Vichy outside of the springs belonging to the State.

But there exists, I have also said, springs obtained by borings or by wells giving natural waters which are bottled and sold.

The springs of this nature existing to my personal knowledge by having been visited by me have already been indicated in reply to question 11 of the interrogatory. I call to mind that these are the following springs:

Prunelle spring, worked by Mr. N. Larbaud;
Dubois, worked by M. Dubois;
Lardy spring }
Larbaud (Longues Vignes) }
Cie. gle. des Eaux Minerales et des Bains de Mer.
L'Etoile, Baudon;
Genereuse, Planchin.

I am not in a position to produce labels of which I could not guarantee the authenticity.

I have no personal knowledge of the composition and production of these springs, but I can give the analyses which have been made of them and which appear to present a complete guarantee of authenticity.

Mr. Willen, in the work mentioned, has given the following composition for the Lardy spring (Exhibit J J):

The laboratory of the school of medicine has given the following analyses for the Larbaud (Longues Vignes) spring (Exhibit K K):

Mr. F. Parmentier has given the following analysis of the Dubois spring (Exhibit L L):

X Q. 24. Is there a bacteriological institute at Vichy? If so, how long has it existed?

X Q. 25. Is it an institution of the State or a private institution?

59 Answer to both questions. I do not know of a special bacteriological institute at Vichy, but there may be; and I have reason to believe that some chemists have appliances which enable them to make bacteriological analyses.

X Q. 26. Are there any publications made by the bacteriological institute at Vichy with reference to the water of the Vichy springs? If so, please state the titles of such publications and whether the same are periodical publications or separate books or pamphlets?

A. I consequently know of no publication emanating from a bacteriological institute of which I ignore the existence. I am aware that a work in this order of ideas of a private character, entitled "Bacteriologie of the Waters of Vichy, St. Yorre, Hauterive and Cusset," has been published by Messrs. Th. Roman and E. Colin, military chemists, (a pamphlet in 8°, Paris, J. B. Bailliere and Son, 1892).

The information in this work has been reproduced in another pamphlet, entitled "Bacteriological Analysis of the Waters of Vichy, by Dr. Gabriel Pouchet, professor of the faculty of medicine of Paris, director of the laboratory of the consultative committee of public hygiene." The conclusions arrived at in this second work are very different to those in the first.

X Q. 27. State what personal knowledge you have of the matters testified to by you in answer to the 16th interrogatory, and what portions of your answer to said interrogatory are based on knowledge or belief otherwise acquired?

A. I have answered that it was from lack of personal knowledge upon the point in question that I could not cite any mineral spring of France the waters of which were imitated by artificial waters.

X Q. 28. Are there any statutes or ordinances in France respecting the manufacture of artificial mineral waters and the sale thereof under the names of the different springs which they severally are intended to artificially reproduce? If so, please annex certified copies of the same to your answer.

A. The manufacture of artificial mineral waters is controlled in France by the ordinance of June 18, 1823, of which I have already furnished the text (see Ex. R).

X Q. 29. State how long you have had any personal knowledge of the matters testified to in answer to the 16th interrogatory?

A. I have occupied myself with mineral waters since the commencement of my career, that is to say, for thirty years.

X Q. 30. Do you know of the sale of a manufactured water in France under the name of St. Alban, and have you ever known of such sale?

A. I have no personal or indirect knowledge of the facts relating to St. Alban. I know the water from having frequently used it. I know where this station is, but I have not visited it.

X Q. 31. State whether or not any artificial selters water or seltzer water is manufactured and sold in France?

A. There is no small town in France where they do not manufacture and sell the water known under the name of selz water and not selters or seltzer. It is simply common water into which has been introduced by pressure carbonic acid obtained by the decomposition of limestone or chalk by means of an acid.

X Q. 32. State whether or not other artificial waters bearing the name of the respective springs which they purport to imitate are

sold in France and how long they have been sold under such names?

A. I know of no other water besides selz water which is sold in France under the name borrowed from a mineral spring.

X Q. 33. Is the manufacture of artificial mineral water recognized in France as a useful industry?

A. Avoiding on the one hand all acts of unfair competition and complying on the other hand with the ordinances of June 18, 1823 for artificial waters, an artificial mineral water may be advantageously manufactured in France.

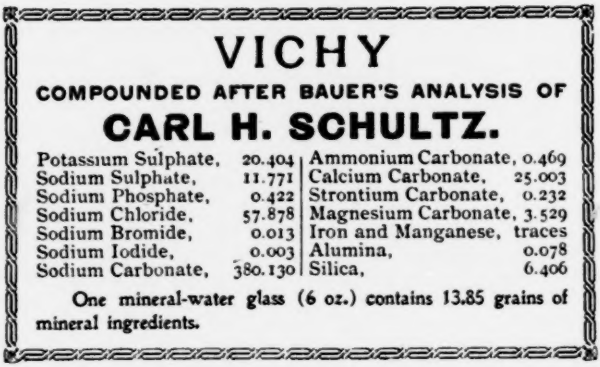
X Q. 34. Do you know of any name by which the general
61 characteristics of the water of the Vichy springs could be shortly expressed other than the name of those springs or the name of "Vichy"?

A. I think that in these matters the name has nothing to do with the article. It is custom which consecrates the name rather than the name which determines, *a priori*, the use. The artificial water imitating that of Vichy, might be called according to the accepted customs in these matters, especially at Vals, "Eau Bicarbonatée Sodique No. 5" so as to indicate that there are about five grammes of bicarbonate.

X Q. 35. In the case of Goin *v.* Pidot in the court of appeals of Lyons, May 7, 1841, it was held that a defendant who had manufactured and sold "St. Alban" water, adding to this the letter "F" meaning "Fabrique," could not be prevented from doing so on the ground that plaintiff's claim would prevent the manufacture of artificial water, and in such case those desiring to drink the same could not do so without repairing in person to the spring. That the single letter "F" was sufficient indication of good faith; that the public is not deceived and that the plaintiffs found in the manufacture of the defendants a competition which was legitimate and which they had no right to suppress. Have you any instructions from your government with reference to the attitude to be taken by yourself as a witness and the complainant government which you represent with reference to such a state of facts?

A. I am not acquainted with the affair Goin *v.* Pidot, nor with the judgment of the court of Lyons, May 7, 1841; I cannot, therefore, give an opinion on this point. I have no special instructions from the government upon the attitude I should take in my deposition. In doing me the honor to designate me the government which I have served for thirty years and which consequently knows me, knew that I would reply only from the inspirations of my conscience and within the limits of my information.

62 X Q. 36. Please examine the two labels used by the defendant in connection with his artificial water made in imitation of the Vichy springs, and state whether the government of France would find the use of such labels objectionable in France, and what, if any, objections would be raised by it against such use?



A. I have no special competence to say what objections these labels would raise in France, but it appears to me that it may be admitted, *a priori*, that if the French government prosecutes them outside of France it would spare them no more in its own country, whether acting directly by itself or through its tenant, the actual Vichy Company.

X Q. 37. Are these labels in any manner similar to any labels used on natural vichy waters which are known to you?

A. These labels in no way resemble those of any actual Vichy spring with the exception that they bear the name of that locality.

63 X Q. 38. Do you know of any other matter or thing of benefit or advantage to the defendant in this case? If so, state the same fully as if you were specifically interrogated thereunto?

A. I have nothing to add to my deposition.

(Signed) L. AGUILLON.

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness this 2d day of April, 1897, before

NEWTON B. EUSTIS,
Commissioner and Interpreter.

EMBASSY OF THE UNITED STATES, *Paris, France,* } *ss:*

I, Newton B. Eustis, do certify that Louis Charles Marie Aguillon, the witness, personally appeared before me on the 2d of April, at 6.30 o'clock in the afternoon, at the city of Paris, and after being sworn to testify the truth, the whole truth and nothing but the truth, did thereupon depose to the matter contained in the foregoing deposition, and did, in my presence, subscribe the same and identify the exhibits annexed thereto. And I further certify that I have subscribed my name to each half sheet thereof and to each exhibit.

[SEAL.] NEWTON B. EUSTIS.

64 Interrogatories to be propounded to Ch. Fere, a witness called in behalf of the plaintiffs, under the above-named commission in the above-entitled cause.

EMBASSY OF THE UNITED STATES, *Paris, France,* } *ss:*

I, Newton B. Eustis, do solemnly swear that I will truly and faithfully interpret the oath and interrogatories to be administered to Charles Louis Fere, a witness now to be examined out of the English language into the French language, and that I will truly and faithfully interpret the answers of the said Charles Louis Fere thereto out of the French language into the English language.

NEWTON B. EUSTIS.

Sworn to and subscribed before me this 27th day of March, 1897.

HENRY VIGNAUD,

[SEAL.] *Sec. United States Embassy.*

CHARLES LOUIS FERE, residing at 30 Rue de Lubeck, Paris, director general of La Compagnie Fermiere de l'Etablissement Thermal de Vichy, aged — years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

Q. 1. Please state your name, age, residence and occupation?

A. Charles Louis Féré, director general of the Compagnie Fermiere of the Thermal Establishment of Vichy, 38 Rue de Lubeck Paris.

Q. 2. How long have you been connected with the Vichy Company and in what several capacities have you been engaged?

A. Since eight and a half years, first as general secretary, then as general director.

Q. 3. What is the general nature of your personal duties as an officer of the Vichy Company?

65 A. I attend specially to all the current business of the company, and I prepare all that of which the solution is reserved for the board of administration.

Q. 4. State whether or not you are familiar with the relations of the Vichy Company to the French State?

A. Yes.

Q. 5. State whether or not you are also familiar with the relations of the French State to the mineral springs of Vichy, and if so, please state generally what such relations are?

A. The relations which the State may have with the springs which do not belong to it at Vichy have only in view the safety of the public health and not to assure the proper working and preservation of these springs.

Q. 6. What relations have the Vichy Company with the French State, and upon what contracts or leases do the same exist? In answering this question, please annex copies of all papers and documents to which your answers may refer?

A. The State has particular relations with the company resulting from its position of proprietor of the springs of which it has conceded the working to the company. These relations have been fixed by "Le Cahier des Charges" annexed to the law of June 10, 1853, of which I give a copy marked Exhibit A, and by the agreement approved by the law of the 7th of May, 1864, of which I also furnish a copy marked Exhibit B. By the terms of these acts the company has obtained the concession of the establishment and springs of Vichy in the first instance for thirty-three years, then for eighteen years more, and has assumed towards the State various engagements, the execution of which is supervised by a special functionary, who is charged to represent with the company the interests of the State and who has the title of government commissioner.

Q. 7. Please describe what operations are carried on by the Vichy Company at Vichy, France, with respect to the natural mineral springs owned by the French State and there situated?

66 A. The company bottles and despatches as well into France as abroad waters of the springs belonging to the State of which it is the lessee, under labels which are its property and of which the characteristic marks consist in the name of Vichy and the name of the spring and a woodcut vignette showing the thermal establishment.

Q. 8. For what length of time have the mineral waters of the State of Vichy been drawn from the springs and exported to other places?

A. The exportation from Vichy of Vichy waters goes back to a very distant date as is proved by the letters patent of the 23d of March, 1716, of which I remit herewith a copy marked Exhibit C. It has since been continued, and the regulation in the "Cahier de Charge" annexed to the law of concession of the 10th of June, 1853, of which a copy has already been submitted, shows clearly (see especially articles 3, 5, 9, paragraphs 18, 19, 20, 21,) what importance the State as well as the company attach to it.

Q. 9. For what length of time have the waters of the Vichy springs been evaporated and the dry salts exported to other places?

A. Since the year 1857.

Q. 10. For what purposes are the evaporated or dry salts of the Vichy springs used?

A. They are employed as a less efficacious product than the water itself, but nevertheless useful in the treatment of certain maladies by alkalines.

Q. 11. State whether or not there is in France an artificial, factitious or manufactured article, and called "Vichy" water, or by the particular designation of any of the springs situated there?

A. I know of none.

Q. 12. What acts or measures does the French State exercise or take with respect to the supervision of the mineral springs owned by it at Vichy?

A. The State exercises its supervision over the Vichy springs and over their preservation through a special functionary, residing at Vichy, called a government commissioner, by the general
67 superintendence of the thermal establishments, an institution under the ministry of the interior and by the administration of mines.

Q. 13. State in detail the annual export of the waters of the Vichy springs, as far back as you have any record.

A. I annex the statement, marked Exhibit D, of the waters of the springs owned by the State, since the foundation of the company.

Q. 14. Does the Vichy Company export the waters of the mineral springs at Vichy to the United States. If so, state the quantities annually exported as far back as you have any record.

A. We have no means of knowing the exact quantities of Vichy water exported to the United States, as a great part of it is sent there through the medium of commission agents, who do not tell us the destination of the waters which they buy from us. We can only furnish the returns of the consignments made directly by us. This I herewith annex, Exhibit E.

Q. 15. Do you know any other matter or thing of benefit or advantage to the plaintiffs in this suit. If so, state the same fully as if you were specially interrogated thereunto?

A. No.

Cross-interrogatories to be propounded to Charles Fere, a witness called on behalf of the complainants, under above-named commission in the above-entitled case.

X Q. 1. Is the Vichy Company an incorporated company? If so, since when? If yea, please annex a certified copy of the certificate of incorporation of the said company?

A. The Vichy Company is a "societé anonyme," regularly constituted, and the statutes of which have been approved by decrees of the chief of the State, dated the 27th of December, 1862, and the 25th of June, 1864. I annex a certified copy of the statutes and of the two decrees, Exhibits F, G and H.

X Q. 2. If, in answer to the 5th interrogatory, you have
68 stated what the relations of the French State to the mineral springs at Vichy are, state whether these relations are the

same to all springs at Vichy. If not, state to which springs at Vichy the same relations do not exist.

A. I said in reply to the 4th and 6th interrogatories that the company had particular relations with the State resulting from its quality of proprietor of the springs conceded to the company and I have pointed out what were these relations. It is evident that these relations can only exist as regards the springs belonging to the State and not as regards the other springs. I have pointed out in reply to the 5th question what were the relations of the State with the proprietors of springs which do not belong to it.

X Q. 3. If in answer to the 7th interrogatory you have stated what operations are carried on by the Vichy Company, state whether the Vichy Company carries on the same or similar operations with respect to the mineral springs at Vichy, which are not owned by the State?

A. The company only works at Vichy the springs belonging to the State. I stated in the interrogatory that all the natural springs at Vichy belong to the State.

X Q. 4. If in answer to the 8th interrogatory you have stated for what length of time the mineral waters of the city of Vichy have been drawn from the springs and exported, state how long you know this from your own knowledge as distinguished from knowledge derived from books, records or communications from other people?

A. I have been able personally to prove it since I am with the Vichy Company, but I have been aware of it much longer because it is a fact of public notoriety that the waters from the springs belonging to the State at Vichy have been exported and sold outside of Vichy from time immemorial.

X Q. 5. On what matters was your answer to the 8th interrogatory based? If not all on personal knowledge, please annex all records or certified copies of the same to which you refer in your answer to the 8th interrogatory?

69 A. My reply to this question, with supporting documents, will be found in the 8th interrogatory.

X Q. 6. For what length of time have the present labels of the Vichy Company been used?

A. The present labels, without any perceptible modifications, have been in use since 1853. The word vichy has always been the salient point.

X Q. 7. What labels are used by the other springs at Vichy the water of which is bottled and sold? Please annex copies of such labels to your answer?

A. I have no labels of the springs which do not belong to the State at my disposal.

X Q. 8. For what period of time do you know of your personal knowledge the matters testified to by you in answer to the 9th interrogatory?

A. Since I have been with the company; that is, since 1888.

X Q. 9. To what records, documents or other matters did you refer in answering the 9th interrogatory? Please annex to this

answer all records or documents or certified copies thereof to which you thus referred.

A. Among other documents, I refer to a ministerial decree of the 2d of March, 1857, of which the certified copy is herewith annexed, Exhibit I.

X Q. 10. State in what packages, boxes or bottles the dry salts evaporated from the Vichy springs are sold by the Vichy Company, and produce specimens of the various packages or bottles used in such sale. Also produce whatever circulars accompany such bottles or boxes?

A. I annex the products asked for and the circulars which accompany them (Exhibits J, K, L, M, N, O, P, Q).

X Q. 11. State at what prices the dried salts are sold by the Vichy Company?

A. The bottle of 500 grammes, frcs. 3.50; the box of 250 packages, frcs. 15; the box of 50 packages, frcs. 3.50; the box of 25 packages, frcs. 2.50.

X Q. 12. State what the composition of these dried salts is so far as you know?

70 A. The salts being the residue itself of the waters contain only the mineralizing principles enclosed in these latter.

X Q. 13. Has the composition of the dried salts always been the same or does it vary at times?

A. The reply to the preceding question shows sufficiently that the composition of the salts cannot undergo any perceptible variations.

X Q. 14. State what are the analyses of the different springs of Vichy Company.

A. Here appended are the analyses of vichy waters extracted from the work of Messrs. Jacquot & Willen, who are by their position and their knowledge indisputable authorities. (See Exhibit marked M.)

X Q. 15. State whether these analyses have not changed at times, and what different analyses have at different times been made and published relating to different springs at Vichy?

A. The analyses quoted in the preceding reply on being compared with older analyses allow the stability of vichy waters being established.

X Q. 16. State whether the salt is evaporated from each of the springs at Vichy or only some of them and from which?

A. In the use of it the salt is delivered to the public without any distinction being made as to the different springs from which it is extracted.

X Q. 17. State whether the Vichy Company is the only person or corporation evaporating and selling vichy salts, or whether other persons or corporations also evaporate vichy water and sell the salts so obtained?

A. The exploiters of springs situated at Vichy have the right to evaporate the water of these springs and to sell the residue under the name of natural vichy salts. It is possible that some do so.

X Q. 18. State what personal knowledge you have of the matters

testified to by you in answer to the 13th interrogatory. If you refer to any records, annex certified copies thereof?

A. The knowledge which the director has of the com-
71 mercial operations transacted by this company. I have annexed to the 13th interrogatory (see Exhibit D), a certified statement of the exports from Vichy.

X Q. 19. State what personal knowledge you had of the matters testified to by you in answer to the 14th interrogatory? If you refer to any writings or documents annex certified copies thereof?

A. The answer is the same as for the foregoing question. I have annexed to the 14th interrogatory the certified statement of the shipments made by the Vichy Company to the United States (see Exhibit F).

X Q. 20. What is the temperature at which the different springs at Vichy issue from the earth?

A.—

Grande Grille	41° 8
Puits Chomel	44°
Lucas	28° 4
Hopital	34°
Celestins Grotte	14°
Celestins Anciens	13° 8
Celestins Nouveaux	16° 4
Parc	16° 3

X Q. 21. Do you know any artificial, fictitious or manufactured article called vichy water which is sold in other parts of Europe than France or in the United States of America? If so, state how long you have known of the same?

A. I knew last year of a Mr. Levati who manufactured vichy waters at Milan. He was condemned by a sentence of the court of that town, dated the 28th day of October, 1896.

X Q. 22. State whether or not you have any knowledge of Dr. Struve's various establishments for the manufacture of artificial mineral waters in England, Germany, Austria, Russia and other countries of Europe? If so, state how long you have known of the same?

A. I have no knowledge of it whatever.

72 X Q. 23. Has the Vichy Company as far as you know ever made any attempt to prevent the sale of artificial mineral waters which are sold at Dr. Struve's establishments in the different countries of Europe, under the name of vichy water or vichy? If so, state what attempts have been made, and whether they have been successful or not?

A. The company has never known of artificial vichy water manufactured by Dr. Struve.

X Q. 24. State how long you have known of the sale of defendant's artificial vichy water complained of in this suit?

A. Since 1889.

X Q. 25. Have you ever been in the United States of America? If so, how long, where and when?

A. No.

(Signed) CH. FÉRE.

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness this 27th day of March, 1897, before

NEWTON B. EUSTIS,
Commissioner and Interpreter.

EMBASSY OF THE UNITED STATES, *Paris, France,* } ss:

I, Newton B. Eustis, do certify that Charles Fére, the witness, personally appeared before me on the 27th day of March, at 6.30 o'clock in the afternoon, at the city of Paris, and after being sworn to testify the truth, the whole truth and nothing but the truth, did thereupon depose to the matter contained in the foregoing deposition and did, in my presence, subscribe the same and identify the exhibits annexed thereto. And I further certify that I have subscribed my name to each half sheet thereof and to each exhibit.

[SEAL.] NEWTON B. EUSTIS.

73 Interrogatories to be propounded to Emile Dietze, a witness called on behalf of plaintiffs under the above-named commission in the above-entitled case.

EMBASSY OF THE UNITED STATES, *Paris, France,* } ss:

I, Newton B. Eustis, do solemnly swear that I will truly and faithfully interpret the oath and interrogatories to be administered to Emile Gilbert Dietze, a witness now to be examined out of the English language into the French language, and that I will truly and faithfully interpret the answers of the said Emil Gilbert Dietze thereto out of the French language into the English language.

NEWTON B. EUSTIS.

Sworn to before me this 5th day of April, 1897.

HENRY VIGNAUD,
[SEAL.] *Sec. United States Embassy.*

EMILE GILBERT DIETZE residing at the Hotel de l'Inspection at Vichy, commissioner of the government to the thermal establishment of Vichy, aged — years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

Direct examination:

Q. 1. What is your name, residence and occupation?

A. Emile Gilbert Dietze; commissioner of the government to

the thermal establishment of Vichy; living at Vichy, Hotel de l'Inspection.

Q. 2. What are your duties as an official representative of the French State at and in connection with the mineral springs owned by the French State at Vichy, France?

A. The functions which I exercise were instituted by the law of June 10, 1853, and consist in representing the State with the
74 Compagnie Fermiere, and especially in seeing that a good, complete and loyal execution of the duties, clauses and conditions of the lease of the establishment and of the springs granted to the compagnie is carried out.

Q. 3. State whether or not there are any natural mineral springs in the town or commune of Vichy except those owned by the French State?

A. If you mean by that, springs which flow naturally, no. There are only those belonging to the State.

Q. 4. How many springs does the French State own at Vichy; describe them and state their particular designations?

A. The State possesses actually eight, which are: Grande-Grille, Puits-Chomel, Hopital, Lucas, Anciens Celestins, Nouveaux Celestins, Grotte des Celestins, Parc.

Q. 5. Are there any mineral springs at Vichy which are not natural but have been brought into existence by artificial means; if so, describe them and state how they have come into existence and how long they have respectively been in existence?

A. Yes; there are Vichy springs which have been opened up by artificial means, although their waters are natural. The works to force the flow consisted in soundings and borings.

There can be cited amongst springs of this nature that of the Parc belonging to the State, bored in 1844; the spring Larbaud or the Longues Vignes, bored in 1860; the Puits-Dubois, in 1887.

Q. 6. State whether or not any of the so-called artificial mineral springs at Vichy have been dedicated to the public use, and also whether or not perimeters of protection under the law have been established with respect to them or any of them, and whether or not the perimeters of protection established with respect to the springs of the French State enured under the law to the benefit of such artificial springs, and whether or not you or any other officer of the French government have any duty of supervision or control with respect to them?

A. There are only the springs belonging to the State at Vichy which have been declared of public interest.

75 Q. 7. Please annex a diagram or drawings showing the perimeter of protection established by law with respect to the springs of the French State at Vichy, and also state the nature and effect of such perimeter of protection?

A. I herewith give the drawing indicating the perimeter of protection established for the benefit of the springs belonging to the State at Vichy (Exhibit P P). The perimeter of protection consists in a zone established by decree of the government around the springs, recognized to be of public interest, in the interior of which no

soundings, no subterranean work can be undertaken without preliminary authorization (law of July 14, 1856).

Q. 8. Do you know of any other matter or thing of benefit or advantage to the complainants in this case? If so please state the same as if you were specially interrogated thereunto?

A. I have nothing to add to my deposition.

Cross-interrogatories to be propounded to Emile G. Dietze, a witness called on behalf of complainants under the above-named commission in the above-entitled case.

X Q. 1. If you have stated, in answer to the 3d interrogatory, that there are or are not any natural mineral springs in the town or commune of Vichy except those owned by the French State, answer this question also as to the time of January, 1892?

A. I said in the 3d interrogatory that there are no other springs flowing naturally at Vichy except those belonging to the State, and this answer applies as well before as after January, 1892.

X Q. 2. State the names of all the natural springs at Vichy which were not owned by the French State in January, 1892, and describe their location and state whether their waters are bottled and sold?

A. My reply to the first question of the cross-interrogatory renders the present question unnecessary.

X Q. 3. If in answer to the 5th interrogatory you have stated that there are mineral springs at Vichy which have been
76 brought into existence by artificial means, state whether the waters of these springs are bottled and sold; also describe the operations by which these waters are produced?

A. This question has been completely answered in the 5th interrogatory except in what concerns the bottling and sale of the waters originating from sounding or boring; these waters which, after all, are natural waters, are bottled and sold to the public after authorization by the government.

X Q. 4. What are the analyses of these different artificial mineral springs at Vichy, or their chemical composition?

A. This question is not within my competency.

X Q. 5. Is the chemical composition of these different artificial mineral springs at Vichy the same in every case?

A. Same answer as to the 4th interrogatory.

X Q. 6. Do you exercise any superintendence over the composition of these artificial mineral waters? If so, state what you do with reference to such superintendence and whether any analyses are made from time to time of these artificial waters, and if so, when and how often?

A. I have already said that no artificial mineral waters exist at Vichy. This question is consequently without object.

X Q. 7. State who owns the land on which these artificial mineral springs are situated?

A. If by artificial spring is understood springs resulting from boring and sounding and from which a natural mineral water flows,

I reply that the springs are situated in grounds belonging to different individuals.

X Q. 8. State whether there are any labels used upon the bottles or siphons containing the waters of these artificial springs; and if so, produce copies of such labels to be annexed to your deposition?

A. I have already answered that artificial waters do not exist at Vichy.

X Q. 9. State where you were born?

A. I cannot answer to a like question absolutely foreign to the facts of the case and which only bears on my private life. In France a similar question could not be put except in a criminal interrogatory.

77 X Q. 10. How long have you known of the various establishments for the production of artificial mineral water which Dr. Struve has in the different countries of Europe?

A. I have no knowledge of such establishments.

X Q. 11. State how long you have known of the manufacture of artificial vichy water at these establishments and at each of them?

A. Same answer as to the 10th cross-interrogatory.

X Q. 12. State how long you have known of the manufacture and sale of artificial vichy water under the name of "vichy" in any European countries?

A. I have no knowledge of any factory or sale of artificial vichy water under the name of "vichy" in Europe.

X Q. 13. Where did you receive your education?

A. Same answer as to the 9th cross-interrogatory.

(Signed) EM. DIETZE.

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness this 5th day of April, 1897, before

NEWTON B. EUSTIS,
Commissioner and Interpreter.

EMBASSY OF THE UNITED STATES, *Paris, France,* } *ss:*

I, Newton B. Eustis, do certify that Emile G. Dietze, the witness, personally appeared before me on the 2d of April, at 5 o'clock in the afternoon, at the city of Paris, and after being sworn to testify the truth, the whole truth and nothing but the truth, did thereupon depose to the matter contained in the foregoing deposition and did, in my presence, subscribe the same and identify the exhibit annexed thereto. And I further certify that I have subscribed my name to each half sheet thereof and to each exhibit.

[SEAL.] NEWTON B. EUSTIS.

78 Interrogatories to be propounded to Edward Jeramie, president of the Syndicate of Mineral Waters of France, a witness called on behalf of the above-named plaintiffs under the above-named commission in the above-entitled case.

EMBASSY OF THE UNITED STATES, *Paris, France,* } ss:

I, Newton B. Eustis, do solemnly swear that I will truly and faithfully interpret the oath and interrogatories to be administered to Edward Jeramie, a witness now to be examined out of the English language into the French language, and that I will truly and faithfully interpret the answers of the said Edward Jeramie thereto out of the French language into the English language.

NEWTON B. EUSTIS.

Sworn to and subscribed before me this 27th day of March, 1897.

HENRY VIGNAUD,
Sec. United States Embassy.

[SEAL.]

EDWARD JERAMIE, residing at 5 Boulevard Malesherbes, Paris, engineer and president of the Syndicate of Mineral Waters of France, aged — years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed and examined on the part of the plaintiffs, doth depose and say as follows:

Q. 1. Please state your name age, residence and occupation?

A. Edward Jeramie, profession, engineer and president of the Syndicate of Mineral Waters of France; residence, 5 Boulevard Malesherbes, Paris.

Q. 2. Are you connected with any association organized with respect to the control, management or general interest of natural mineral waters in France, and, if so, please state the nature of such association, the objects for which it is formed, the authority for

79 its existence, and what relation you occupy to it?

A. There exists a syndicate of French mineral waters constituted in accordance with the law of March 21, 1884. It has for its aim and object the protection in common of the economical, industrial and commercial interests connected with mineral waters in the largest possible sense. Its aim is principally to find out and pursue frauds, counterfeits, actions [acts] of a disloyal [unfair] competition which would be of a nature prejudicial to the general interests of its adherents.

Q. 3. What is the meaning of an artificial mineral spring as distinguished from a natural mineral spring as the term is used in France?

A. To my knowledge the expression "artificial mineral spring" is not an expression used in current language. It would seem to designate the springs of natural water which man's work have caused to flow from the soil as distinguished from springs which emerge or gush naturally without man's intervention.

Q. 4. State whether or not there are any artificial or factitious

mineral waters made or sold in France and manufactured of chemical ingredients in imitation of the waters of any natural mineral spring to which the proper name of such natural mineral spring is applied?

A. If there are manufactured in France factitious mineral waters with chemical products which are offered for sale under the name of the same natural mineral spring [If in France factitious mineral waters are manufactured with chemicals and offered for sale under the name of some natural mineral spring], it is in my opinion contrary to the law relating to mineral waters, which does not permit the application of the name of a spring except to the waters directly taken from that spring.

Q. 5. What do you understand the word "vichy" to mean when applied to mineral waters?

A. The word "vichy" can only designate, according to me, the natural mineral water flowing at "Vichy."

80 Q. 6. State whether or not there are any manufactured vichy waters made and sold in France, that is to say, waters produced from artificial ingredients conforming, or claiming to conform to the chemical analysis of the natural mineral springs, and to which artificial waters the name "vichy" is applied? If you answer nay, please state whether there are any such artificial mineral waters.

A. I do not know of any artificial mineral waters manufactured in imitation of vichy waters and sold in France as such. The decisive reason why there can be none is that the artificial waters can only be prepared after formulas approved by the minister of the interior and the retailers can only sell the authorized artificial waters; now the administration refuses to approve all imitation of mineral water because it is impossible to recognize in the preparations known under the name of artificial mineral waters the therapeutic properties of natural mineral waters, and the denomination, evidently improper, of "artificial mineral waters" has disappeared from the Codex Medicamentarius, where all formulas for medicinal and pharmaceutic preparations are to be found.

Q. 7. Do you know any other matter or thing of benefit or advantage to the plaintiff; if so, state the same as if you were specifically interrogated thereunto?

A. I have nothing to add.

Cross-interrogatories to be propounded to Edward Jeramie, president of the Syndicate of Mineral Waters of France, a witness called on behalf of the complainants under the above-named commission in the above-entitled suit.

Q. 1. State how long you have been connected with the association referred to in your answer to the second interrogatory and in what capacity or capacities?

A. I am connected since 1886 as vice-president and president.

Q. 2. State whether there is a bacteriological institute at

81 Vichy, and if so, how long it has existed and what its relations are to your association, if any; also whether it is an insti-

tution supported by the State, by the commune of Vichy or a private institution.

A. I am unaware of any bacteriological institute at Vichy.

Q. 3. What is the French term used to denote an artificial mineral spring?

A. There is no usual expression; if it (be) a question of a spring obtained by boring it is sometimes designated by "forage" under the name of "boring." [If the spring in question has been obtained by soundings it is sometimes designated "boring" under the head of "soundings."] As I have stated, the term artificial would mean the same thing.

Q. 4. Is this term also used to denote the water of artificial springs or only the spring itself?

A. This only applies to the springs. There is no separate term for the waters.

Q. 5. Is this term written or printed on any of the labels under which the water of such artificial springs is sold; if so, please annex such labels to your deposition?

A. I know of none.

Q. 6. State what personal knowledge you have as to the matters testified to by you in answer to the 4th interrogatory? By personal knowledge I mean knowledge derived from personal observation as distinguished from knowledge obtained from the reading or inspection of books, documents, &c., or received by communication from others.

A. My personal knowledge of the subjects on which the interrogatory bears, is derived from my experience and practice during more than twenty years during which I have been in the mineral-water industry.

Q. 7. To what year does your personal knowledge as to the manufacture and sale of any artificial or manufactured mineral waters in France go back?

A. The year that I read, for the first (time), the law which, in my opinion (or judgment) prohibits all imitation of natural mineral waters by artificial waters.

82 Q. 8. When and where were you born, and where were you brought up?

A. At Paris in 1846, and I was brought up in Paris.

Q. 9. Is the word "vichy" applied to any artificial waters produced in Vichy?

A. I do not know of artificial waters manufactured at Vichy in imitation of the natural waters. In any case they would not have the right to the name of "vichy."

Q. 10. What personal knowledge have you as to the matters testified to in answer to the sixth interrogatory?

A. I have already said it in my answer to the sixth cross-interrogatory.

Q. 11. If you have given reasons for your answer to the sixth interrogatory state what statutes, ordinances or public regulation prevents the sale of artificial vichy waters in France under that

name and indicate particularly the year and date of such statute, regulation or ordinance?

A. It is article 14 of the ordinance of the 18th of June, 1823, which allows the manufacture of an artificial mineral water only according to the formulas approved by the minister of the interior. It is the provision of the Codex Medicamentarius of 1884, approved by the decree of the president of the Republic, dated the 13th of February, 1884, which proscribes, page 16, all artificial mineral waters.

Q. 12. Is there any artificial or manufactured selters or seltzer water sold in France under such a name?

A. Seltzer water is manufactured and sold in France under the conditions stipulated by the ordinance of 1823, but the name seltzer water has become a purely generic denomination to indicate a simple gaseous water. Similarly chemists sometimes sell under the name of seidlitz water, purgative saline water, the formula of which is in the Codex Medicamentarius. But this does not mean for the public the imitation of an existing type of natural water.

Q. 13. Did you ever use it?

A. Once by chance when I could not find natural mineral waters at my disposal.

83 Q. 14. What is the characteristic difference between selters or seltzer water and vichy water?

A. The expression "vichy water" contrary to the expression "seltzer water" has not ceased to indicate the origin of the product. It has not become a generic denomination.

Q. 15. Have you any knowledge of Dr. Struve's various establishments in the different countries of Europe for the manufacture of artificial mineral waters, and if so, how long have you had such knowledge and knowledge of the waters there produced?

A. I am not acquainted with the productions of Dr. Struve and I do not think they are introduced into France.

(Signed) ED. JERAMIE.

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness this 27th day of March, 1897, before

NEWTON B. EUSTIS,
Commissioner and Interpreter.

EMBASSY OF THE UNITED STATES, *Paris, France,* } *ss:*

I, Newton B. Eustis, do certify that Edward Jeramie, the witness, personally appeared before me on the 27th of March, at 4.45 o'clock in the afternoon, at the city of Paris, and after being sworn to testify the truth, the whole truth and nothing but the truth, did thereupon depose to the matter contained in the foregoing deposition and did, in my presence, subscribe the same. And I further certify that I have subscribed my name to each half sheet thereof.

[SEAL.] NEWTON B. EUSTIS.

84 Interrogatories to be propounded to Edward Bonjean, a witness called on behalf of the above-named plaintiffs under the above-named commissioner in the above-entitled cause.

EMBASSY OF THE UNITED STATES, *Paris, France,* } *ss:*

I, Newton B. Eustis, do solemnly swear that I will truly and faithfully interpret the oath and interrogatories to be administered to Edward Bonjean, a witness now to be examined out of the English language into the French language, and that I will truly and faithfully interpret the answers of the said Edward Bonjean thereto out of the French language into the English language.

NEWTON B. EUSTIS.

Sworn to and subscribed before me this 2d day of April, 1897.

HENRY VIGNAUD,

[SEAL.] *Sec. United States Embassy.*

EDWARD BONJEAN, residing at 3 Croisic square, Paris, chief of the laboratory of the consultative committee of public hygiene of France, being duly and publicly sworn, pursuant to the directions hereto annexed on the part of the plaintiffs, doth depose and say as follows:

Direct examination:

Q. 1. What is your name, age, residence, and occupation?

A. Edward Bonjean; residing in Paris, 3 Croissic square.

Q. 2. What degrees from institutions of learning have you received, and to what orders or societies do you belong?

A. Chief of the laboratory of the consultative committee of public hygiene of France, minister of the interior, professor of chemistry in various institutions and associations.

85 Q. 3. What experience have you had as a chemist and geologist?

A. I have carried on over three thousand chemical and bacteriological analyses of all kinds of water, the results of which are consigned in part to the annual records of the operations of the consultative committee of public hygiene of France.

I have been called upon to examine, from the point of view of their chemical composition, a tolerably large number of rocks. Some of my analyses figure in the work of Mr. Gustave F. Dollfus on the geological researches in the neighborhood of Vichy, Allier (Recherches Geologiques Sur les enverons de Vichy Allier). In collaboration with M. l'Docteur Pouchet, we have just published the methods that we have established for the rigorous examination of waters destined for public alimentation, &c.

Q. 4. State whether or not you are familiar with the mineral springs belonging to the French State at Vichy; and if so, state in what particulars your knowledge of them consists?

A. Particularly in what concerns the waters of Vichy I have had

to occupy myself with quite a large number of interesting questions. Especially in 1892, when I had occasion to examine on the spot with Mr. Pouchet, professor of the faculty of medicine of Paris, and from a bacteriological point of view all the waters of the springs belonging to the French State. This analysis was the means of proving the remarkable purity of these waters at the "griffons" of the springs. Again, at various times I have made chemical analyses of some of these waters, of mineral waters from the neighborhood of Vichy, of the salts extracted by various methods from the mineral waters and the utilization of the primitive waters, &c.

Q. 5. What is the difference, if any, between a natural mineral spring and an artificial mineral spring?

A. In these two cases, the mineral water is of natural origin.

86 The expression "artificial mineral spring," might suggest certain inexact interpretations. It would be more logical to say:

Natural spring of mineral water.

Artificial spring of mineral water.

The only difference existing between the two springs is the following:

In the natural spring of mineral water the water flows from the surface of the ground without any assistance on the part of man.

In the artificial spring of mineral water the griffons are below the surface of the ground, and it is necessary to have recourse to appropriate means (soundings, borings, wells) in order to open up these griffons or to conduct the mineral water to the surface of the ground.

Q. 6. Are there any artificial mineral springs in the town or commune of Vichy, and if so describe them. State the manner in which and the time when they were respectively brought into existence and their relative importance as compared with the natural springs situated in the same place?

A. Yes. There are in the commune of Vichy natural mineral-water springs which have been opened up by appropriate means [methods]. For example, I will mention the well "Carre," the Dubois well, the bored Lardy spring, the artesian Parc spring.

I cannot say anything definite from the point of view of the difference of chemical composition. As regards the medical point of view I am not competent.

Q. 7. State whether or not there are any natural mineral springs in the town or commune of Vichy other than those belonging to the French State?

A. No.

Q. 8. State the nature of a perimeter of the protection as applied to a mineral spring?

A. The perimeter of protection is established, as its name indi-

87 cates, with the view of protecting the mineral-water spring against any action which could bring about a prejudicial variation either in the quality or quantity of the water of a spring recognized to be of public interest.

The perimeter of protection is defined in the "Law on the preser-

vation and parceling out of mineral-water springs of July 14, 1856, title 1st, article 2d." A perimeter of protection can be assigned by a decree issued in the forms established in the preceding article to a spring declared to be of public interest.

This perimeter may be modified if new circumstances show the necessity.

Article 3. "No sounding, no subterranean work can be undertaken within the perimeter of protection of a mineral spring declared of public interest without preliminary authorization, &c., &c."

Q. 9. State whether or not any springs in the town or commune of Vichy other than the springs of the State are protected by a perimeter of protection; and if not, please state why?

A. A perimeter of protection has been established exclusively in favor of the Vichy springs belonging to the State by the decree of the president of the Republic of the 17th of May, 1874 (Versailles).

This perimeter is extended by a new decree of the president of the Republic of August 8, 1895.

I do not know of a perimeter of protection granted to other mineral springs at Vichy outside of those belonging to the State.

Q. 10. State whether or not you are familiar with the chemical purity and therapeutic qualities of natural mineral water as compared with artificial or manufactured mineral water made of factitious ingredients not derived from the natural spring. And if so, state whether or not the natural mineral water differs from the artificial; and if so, in what particulars?

A. It is impossible to have a precise idea on this question. At least in France the term of comparison, that is to say, artificial or manufactured mineral water, not existing. Laboratory ex-
88 periments could only have been made on this point, and to our knowledge they have not been carried out.

The ordinance of 1823 has changed in meaning for the administration which now designates, and have done so for a long time, by the name of factories of artificial mineral water the establishments where gaseous waters are made.

The commission of the French Codex Medicamentarius of 1884 declared "that it is impossible to accord to the preparations known under the denomination of artificial mineral waters the therapeutic properties of natural mineral waters, and that the moment has come to eliminate from the French pharmacopœia the evidently improper denomination of artificial mineral waters and to retain simply the formulas of saline "solutés," either gaseous or non-gaseous, that may be looked upon as medicines. The consultative committee of public hygiene of France, at its meeting of 9th of January, 1888, approved the report of Professor Regnault, of the Paris faculty of medicine, member of the academy of medicine, on the subject of a demand addressed to the minister of commerce and industry by a company with a view to obtaining an authorization to manufacture, on a large scale, regularly charged mineral waters.

The committee arriving at an opinion upon arguments set forth in the body of the report, "thinks it would be right in affirming

the impossibility of reproducing solutions which shall be identical to natural mineral waters."

In the report of the commission of the pharmaceutical society of Paris, Messrs. Chatin, Poggiale, Lefort, say: "It is impossible to attain even very approximately the synthesis of natural mineral waters."

The only apparent exceptions which may be quoted, of the waters called seidlitz and seltzer, it is unnecessary to take into consideration. It is known that these names are given in a general way to saline or gaseous solutions which differ totally from the natural
89 mineral waters of which they bear the name; they comprise, to a great extent, chemical productions which are altogether foreign to those met with in natural mineral waters, especially tartaric acid.

Q. 11. State whether or not you have analyzed a bottle or other quantity of the defendant Schultz's so-called artificial or manufactured "vichy" water; and, if so, state in what particulars it compares with or differs from the natural mineral water it imitates?

A. In the month of October, 1893, I carried out some chemical and bacteriological analyses on a gasified water contained in siphons of a cubic capacity of about 750 centimeters. Two labels were gummed on these siphons, which was attached to my report of November 6, 1893.

One of these labels bears the following indications:

Carl H. Schultz's Vichy, Compounded After Bauer's Analysis.

Potassium sulphate.....	20.404	Ammonium carbonate..	0.469
Lithium sulphate.....	11.771	Calcium carbonate.....	25.003
Sodium phosphate.....	0.442	Stontium carbonate.....	0.232
Sodium chloride.....	57.878	Magnesium carbonate...	3.529
Sodium bromide.....	0.013	Iron and manganese.....	traces
Sodium iodide.....	0.003	Alumina.....	0.078
Sodium carbonate.....	380.130	Silicic acid.....	6.406

The figures which I have laid down in my analysis approach closely to those shown on the labels, as can be seen from the following table (Exhibit M M), where I have shown Bauer's translated analysis.

So as to compare these results with those of the natural mineral water which it imitates I show the analysis of the mineral-water springs of the Grande Grille of Vichy, made by Mr. Willen, professor of chemistry to the faculty of sciences of Lille.

As may be seen, Schultz's artificial water approaches very closely to the average composition of the natural mineral waters of Vichy as regards the coarser chemicals such as carbonate of soda, chlorides, sulphates, salts of lime.

It appears to differ from it remarkably by the absence of certain products such as arseniate of soda, carbonate of potassium, carbonate of lithium, boric acid, rubidium, &c., &c.

90 From a bacteriological point of view the water examined by me contains a large number of germs of various species, especially putrid bacteria.

Last question. Do you know of any other matter or thing of benefit or advantage to the plaintiffs? If so, state the same as if you were particularly interrogated thereunto?

A. I have nothing to add.

Cross-interrogatories to be propounded to Edward Bonjean, a witness called on behalf of the complainants under the above-named commission in the above-entitled cause.

X Q. 1. Please state your age and how long you have had experience as a chemist and geologist?

A. I have thirteen years of experience.

X Q. 2. Have you ever analyzed the waters of the mineral springs at Vichy? If so, state at what time and what the results of your analyses have been?

A. See my reply to the third interrogatory. I cannot give you all the results of my analyses on account of the considerable amount of work it would require. I only quote:

"The examination of all the mineral waters of Vichy belonging to the State from a bacteriological point of view; the results of these numerous analyses have demonstrated the remarkable purity of these waters at the origin. The analyses of the mineral waters of the neighborhood of Vichy which have shown the variations of composition of the waters which have not been immediately put into bottles.

The chemical analyses and researches made on the composition of the salts extracted from the vichy mineral waters, the original waters," &c.

X Q. 3. Have you ever analyzed the waters of the artificial mineral springs at Vichy described in your answer to the 6th interrogatory?

X Q. 4. If yea, state what the results of your analyses have been?

Answer to both questions. Yes; I have analyzed from a
91 bacteriological point of view all of those waters which belong to the French State, but not from a chemical point of view. We have been able to prove that these waters are pure at their griffons.

X Q. 5. Describe the mode of producing these artificial springs and chemical composition of their waters, if you know?

A. In principle the manner of the production and the chemical composition of the waters from artificial springs are exactly the same as those from natural springs.

Below ground these waters do not present any difference and the natural phenomena ruling the production and the chemical composition of the water act indifferently on one or the other. I have already said that the only difference existing between these two waters consist in the way in which they come from the ground.

X Q. 6. Is the water of any of these artificial mineral springs bottled and sold? If so, under what name or label are such waters sold?

A. This question of a commercial order is not within my competence.

X Q. 7. State whether in January, 1892, there were any natural mineral springs in the town or commune of Vichy other than those belonging to the French State?

A. No.

X Q. 8. Are you a practicing physician and have you studied medicine? And, if so, when and where?

A. No; I have devoted myself to the study of chemistry and have made a specialty in particular*ly* of the study of waters.

X Q. 9. State upon what knowledge your answer to the 10th interrogatory is based, stating in detail all the natural mineral springs you have examined and know and all the artificial mineral waters which you have examined and know?

A. It is sufficient to know my answer to the 10th interrogatory to learn the one relative to this 9th interrogatory.

X Q. 10. State how you procured the bottle referred to in your answer to the 11th interrogatory?

A. By Messrs. Jones & Govin, of New York.

X Q. 11. State how you knew this bottle to contain the waters of the defendant Schultz?

92 A. From the labels gummed on each receptacle and the directions stamped in the heads of the siphons.

X Q. 12. How was this bottle labeled? Either annex the label, — state the full text which you found on the same.

A. Each siphon bore two labels similar to those which I annex to my deposition (Exhibits N N).

X Q. 13. Is it not a fact that the analyses of the waters of the Vichy spring have differed at different times? If yea, state the different analyses of vichy water of which you have knowledge and made at different periods?

X Q. 14. State how the composition of the different natural springs at Vichy differs, giving the analysis of each of those springs known, whether owned by the State or not?

Answer to 13 and 14. To my knowledge, there is no instance sufficiently established of the variations in the composition of the mineral waters from the Vichy springs. The very small differences which could be noticed in certain analyses carried out at different epochs by competent men, ought to be attributed rather to the imperfection of the means employed to arrive at these results than to the variableness of the component parts of these waters.

It must be understood that all waters, whatever they may be, are susceptible to momentary changes after great telluric or atmospheric perturbations, but generally they recover quickly their former state.

In the lapse of over fifty years, the residuum of the mineral waters from the Vichy springs, determined by different authors and very probably under very different conditions of analyses, have given the following results, which are, as may be seen, very similar (Exhibit

O O). The difference which exists between Bouget's and Willen's figures may probably be attributed to the fact that the residuum of the waters in Bouget's experiments were less dry than those of Mr. Willen.

Taking this fact into consideration, it may be said that the
93 residuum per liter of the mineral waters of the Vichy springs belonging to the State has not varied.

(S'g'd) ED. BONJEAN.

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness this 2d day of April, 1897, before

NEWTON B. EUSTIS,
Commissioner and Interpreter.

EMBASSY OF THE UNITED STATES, *Paris, France,* } ss:

I, Newton B. Eustis, certify that Edward Bonjean, a witness, personally appeared before me on the 2d of April, at 4 o'clock in the afternoon, at the city of Paris, and after being sworn to testify the truth, the whole truth and nothing but the truth, did thereupon depose to the matter contained in the foregoing deposition, and did, in my presence, subscribe the same and identify the exhibits annexed thereto. And I further certify that I have subscribed my name to each half sheet thereof and to each exhibit.

[SEAL.] NEWTON B. EUSTIS.

EMBASSY OF THE UNITED STATES, *Paris, France,* } ss:

I, Newton B. Eustis, do solemnly swear that I will truly and faithfully interpret the oath and interrogatories to be administered to Eugene Pouillet, a witness now to be examined out of the English language into the French language, and that I will truly and faithfully interpret the answers of the said Eugene Pouillet thereto out of the French language into the English language.

NEWTON B. EUSTIS.

Sworn to and subscribed before me this 2d day of April, 1897.

HENRY VIGNAUD,
[SEAL.] *Sec. United States Embassy.*

94 Interrogatories to be propounded to Eugene Pouillet, advocate to the court of appeals in Paris, a witness called on behalf of the plaintiffs under the above-named commission in the above-entitled cause.

EUGENE POUILLET, residing at 10 Rue de l'Université, Paris, advocate to the court of appeals of Paris, aged — years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and says as follows:

Direct examination:

Q. 1. Please state your name, residence and occupation?

A. My name is Eugene Pouillet. I am advocate to the court of appeals of Paris, and I live in that city, Rue de l'Université.

Q. 2. State from what institutions of learning you have received degrees and to what orders or societies you belong; and also what professional experience you have had?

A. It suffices, I believe, to recall that I belong to the bar of Paris for nearly forty years, and that at present I am president of the corporation of barristers.

Q. 3. State whether or not you are familiar with the laws of France with respect to the laws of trade-marks, trade-names, unfair competition in manufactures and trades, &c.; and if so, state generally the nature and extent of your knowledge and experience with respect to those subjects?

A. I can affirm that I am familiar with the French laws, and especially with those which regulate industrial property, that is to say, patents, trade-marks and commercial marks, the commercial name and unfair competition in all its forms; besides, I have written on the matters works which are known.

Q. 4. State whether or not the manufacture and sale of arti-
95 ficial mineral waters composed of factitious ingredients in imitation and by the name of the waters of any natural mineral spring is permitted by the laws of France; and if not, please state why not; give your reasons fully?

A. The use of the name of a locality belongs only to the inhabitants of that locality, and a special law of the 28th of July, 1824, punishes the mere act of putting on manufactured goods another name than that of the locality where they have been manufactured.

This general rule, which is nothing but simple probity, is applied to the land products as well as to the manufactured products, with this difference only, that according to jurisprudence the law of 1824 is not applied to land products which are not submitted to any preparation by the hand of man.

This rule of general probity is, moreover, enforced as well as by the law of 1824, by article 1382 of the Civil Code, which obliges every individual to repair the damage which he has caused by his act or fault, in article 423 of the Penal Code, which punishes a fraud on the nature of the merchandise sold. And again, in article 8, paragraph 2, of the law of June 23, 1857, which punishes the

use of a mark bearing indications which may deceive the buyer with respect to the nature of the merchandise.

Therefore, if an individual sells as coming from a locality a product which does not come from there, it is patent on the one hand that he deceives the public regarding the nature of the merchandise sold by him, and on the other that he causes a prejudice to the inhabitants of the locality whose name he uses unduly.

The rule is still the same even if the name thus unduly used is accompanied by a formula, such as "After * * * ," "Imitation from * * * ," "Way of * * * ," or any other equivalent expression (see Maillard de Marafy, Dictionary of Industrial Property, vol. 2, pp. 449 and following: "Cassation," March 15, 1864, Annuals of Industrial Property, Year 1865, p. 394, Paris,
96 February 6, 1874; Codem Loco, 1874, p. 68; Aix, March 20, 1879; Cod. Loc., p. 179).

This is true for all merchandise and in particular for mineral waters.

It is, therefore, not allowed to sell under the name of "Vichy" mineral waters which do not come from the region of Vichy.

Neither is it any more permitted to sell artificial mineral waters, and especially "Vichy" water, even if one adds the term "Factitious," "Artificial," or any other similar one.

Besides, it is now asserted by scientists that mineral waters cannot be reproduced by artificial means.

In fact, the *Codex Medicimentarius* in its last edition, approved by a decree of the president of the Republic, reads as follows:

"The most exact and the best managed analyses have brought "forth only an incomplete knowledge of the composition of mineral "waters. Even in the cases where the elements by which they are "formed have been isolated, one could never manage to determine "with certainty the way they are united and combined together; "finally, certain organic elements whose action is incontestable "could not be restored. Consequently, it is impossible to claim for "the preparations known under the name of artificial mineral "waters the curative properties of the natural mineral waters. "When they are used far from the spring the hot waters lose, of "course, their thermality and the gaseous waters a more or less con-"siderable part of the gases which enter into their composition; but "in consideration of the facility and rapidity of communication, "one can easily assert that transportation does not impair the valua-"ble properties of the natural mineral waters. Arguing with the "consultative committee of public hygiene, the commission of the "Codex judged it advisable to suppress from the French pharma-
"copœia the expression, evidently improper, of artificial
97 "mineral waters, and to merely retain the formulas of the
"saline solutions (solutes) gaseous or non-gaseous considered "as medicines."

Also the editors of the Codex have decided not only that there was no reason to authorize formulas for the imitation of mineral waters actually exported in France, *and* also that it was necessary to cross out from the Codex the expression, "artificial mineral wa-

ters," as corresponding to nothing scientifically exact. It is well to remember that as early as 1861 Professors Chatin, Poggiale, Lefort, were already protesting against this expression, which in their opinion was erroneous and improperly used.

One must conclude from this that the selling under the name of "Vichy" of a factitious artificial water is a real fraud on the nature of the merchandise, for this water does not reproduce the composition or the nature even of those waters. It is this that judgment has been rendered upon for the vichy water itself, by the court of Aix on May 14, 1890 (Ann. of Indus. Prop., 93, 307). Likewise, for the Selz and St. Galmier waters by the correctional tribunal, Seine, March 18, 1891 (Cod. Loc., 93, 279); whose doctrine, after the annulling of the contrary decision passed by the Paris court, has been duly recognized as exact by the court of Rouen, April 14, 1892 (see Cod. Loc.).

Judgment on this has again been given, with the addition of the word "seltz," for the St. Galmier water by the tribunal of commerce of the Seine, May 22, 1890 (Ann. Prop. Ind., 91, 174).

It is right to add that on the 7th of May, 1841 (Dall., 42, 2, 27), the court of Lyons admitted an opposite solution, and I have myself, in my treatise on trade-marks, No. 408, advanced the same opinion. People at that time were under the impression that natural mineral waters could be artificially produced and consequently provided that if one should inform the public that it was water artificially produced it seemed proper not to interfere with the liberty of industry.

98 But from the moment that science declared that the reproduction of artificial mineral waters was impossible it must be recognized that the court of Lyons was mistaken and that I was mistaken in my turn, accordingly.

My book is now exhausted, and in the new edition which is now being printed I shall, without hesitation, adopt the doctrines of science, which is, at the same time, that of the courts.

There are, nevertheless, some designations of locality which have lost their original meaning; Seltz and Seidlitz do not designate any longer the natural mineral waters coming from these two localities, waters which have even, they say, disappeared from the French market. For many years these names have been applied to fictitious composition and have become generic names just like the names Marseilles soap or Cologne water, which designate articles which are made everywhere.

But this exception could not be applied to Vichy, Vals or St. Galmier waters, whose springs have never ceased or ceased to produce natural water and which long usage have not deprived of their original real meaning.

Last question. Do you know of any other matter or thing of benefit or advantage to the plaintiffs? If so please state the same as if you were specially interrogated thereunto.

A. I have nothing to add to what I have said in my answer to the 4th interrogatory unless that the rules I have recalled touching the commercial name and trade-marks arise from a principle of

eternal justice applicable, to my mind, in all civilized countries, and are derived before everything from good sense and morality.

Cross-interrogatories to be propounded to Eugene Pouillet, a witness called on behalf of the complainants under the above-named commission in the above-entitled cause.

X Q. 1. Is your answer to the 4th interrogatory based on statute, ordinance or on a decree of the courts of France? If so,
99 please state particularly to which statute or statutes, ordinance or ordinances, decree or decrees, you refer?

A. I have given these indications in the answer itself. I based my remarks on the principle of fairness which must regulate competition, on the articles 1382 Civil Code, 423 Penal Code, 8th, section 2, of the law of June 23, 1857, on the decree of February 13, 1884, which approves the new edition of the Codex Medicimentarius, on the sentence of the court of Aix, March 14, 1890, on the jurisprudence concerning the Monopole case (Ann. Props. Ind., 1893, p. 297), and finally on the judgment of the tribunal of commerce of the Seine, of May 22, 1890.

X Q. 2. Is it not true that the law of July 28, 1824, does not protect natural mineral waters, and that such statute refers only to manufactured articles?

A. It has, indeed, been expressly decided by the court of Paris in June 29, 1882, and explicitly by the court of cassation on May 5, 1883 (Ann. Prop. Ind. 83, p. 187), that the law of July 28, 1824, "concerning the alterations or suppositions of names for manufactured goods" did not apply to natural mineral waters. But this law, as its title shows, aims only at the fraud which consists in putting falsely the name of a locality on manufactured goods. It did not annul the rules which insure the fairness of commercial competition, nor article 423 of the Penal Code. Inasmuch as it is not applied to non-manufactured goods one should not conclude that the names of the localities where those goods are exploited are left without protection.

X Q. 3. Is not article 1, of the decree of June 18, 1823, subjecting all manufacturers of or dealers in natural and artificial mineral waters to inspection still in force?

A. The ordinance, and not the decree, of June 18, 1823, is still in force, but its application is in fact restricted in the manner I have indicated in answer to the 4th question of the interrogatory.

X Q. 4. Is not the decree of November 21, 1823, obliging
100 every manufacturer in the city of Paris to put upon each bottle his name and the kind of water contained in the bottle still in force?

A. The decree of November, 1823, does not appear to have been annulled, but its application is now limited the same as the application of the ordinance which I have just cited.

X Q. 5. Is not the manufacture of artificial mineral water recognized in France as a useful industry?

A. The preface of the last edition of the Codex answers suffi-

ciently this question, inasmuch as it excludes the formulas of artificial mineral waters and even the expression itself.

X Q. 6. Is not the decision in the case of Goin *v.* Pidot, Dall, Repertoire, 27, p. 72, still good law in France?

A. The decision given in the case of Goin *v.* Pidot does exist in the records of jurisprudence, but a decision of a court does not constitute a law and jurisprudence is variable. In fact, the jurisprudence of the court of Lyons did not prevail, as I before explained.

X Q. 7. Are you the author of a French work on trade-marks entitled "Marques de Fabrique"?

A. As I said in the direct interrogatory, I am the author of a treatise on trade-marks.

X Q. 8. Do you wish to correct or modify any statement which you have made in such work with reference to the matters in question in this litigation? If so, please do so now and fully.

A. I have explained how I was induced in the preceding editions to adopt the theory of the court of Lyons, for what reasons that opinion, which might formerly have seemed just, is recognized today to be erroneous, and how, in the edition of my book, actually now in press, I will abandon the opinion expressed by the court of Lyons to align myself with that of science and jurisprudence.

(S'g'd) EUG. POUILLET,
Avocate á la Com. de Paris, etc.

Examination taken, reduced to writing, subscribed by the
101 witness and by the sworn interpreter, and sworn to by the witness this 30th day of April, 1897, at 10 o'clock in the forenoon.

I, Newton B. Eustis, do certify that Eugene Pouillet, the witness, personally appeared before me on the 30th day of April, 1896, at 10 o'clock in the forenoon, at the city of Paris, and after being sworn to testify the truth, the whole truth and nothing but the truth, did thereupon depose to the matter contained in the foregoing deposition, and did, in my presence, subscribe the name and identify the exhibits annexed thereto. And I further certify that I have subscribed my name to each half sheet thereof and to each exhibit.

[SEAL.] NEWTON B. EUSTIS.

EMBASSY OF THE UNITED STATES, *Paris, France,* } *ss:*

I, Newton B. Eustis, do solemnly swear that I will truly and faithfully interpret the oath and interrogatories to be administered to Charles Pierre Count de Maillard de Marafy, a witness now to be examined out of the English language into the French language, and that I will truly and faithfully interpret the answers of the said Charles Pierre Count de Maillard de Marafy thereto out of the French language into the English language.

NEWTON B. EUSTIS.

Sworn to and subscribed before me this 27th day of March, 1897.
[SEAL.] HENRY VIGNAUD,
Sec. United States Embassy.

PIERRE, CHARLES, COUNT DE MAILLARD DE MARAFY, residing at 155 Boulevard Malesherbes, director of the Union of Manufacturers for the International Protection of the Manufacturing [Industrial] Property, aged — years and upwards, being duly and publicly
102 sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

Q. 1. Please state your name, age, residence and occupation?

A. Pierre Charles, Count de Maillard de Marafy; living in Paris, Boulevard Malesherbes, 155; director of the Manufacturers' Union for the International Protection of Industrial Properties, a society acknowledged by the State, and an establishment of public utility.

Q. 2. State from what institution of learning you have received degrees and to what orders or societies you belong, and also what professional experience you have had?

A. I received the diploma of licentiate in law at the Law School of Poitiers. I am a member, since its foundation, of the Society of Comparative Legislation, an institution declared of public utility. I was instructed during five years with the questions of trade-marks by [I was for five years in charge of trade-mark matters in the office of] the newspaper *L'Economiste Francais*, and only ceased my collaboration when the development of the society which I manage absorbed all my time. I [have] instigated numerous conventions, [treaties] diplomatic interpretations on trade-marks, the commercial name [trade-names] and the name of origin, between France and the following countries: Germany, Italy, Belgium, Switzerland, Russia, the United States of America, and I have frequently been called in the course of the last twenty-five years before the parliamentary commissions of the Senate and of the Chamber of Deputies to give my advice on projects of law [opinion on bills] relating to trade-marks, the commercial name [trade-names], name of the place of manufacture, and disloyal [unfair] competition. I was elected reporter [commissioner] of the section of trade-marks and of the commercial name to the Official Congress of Industrial Property, held at Paris at the time of the Universal Exposition in 1878 and I am at this moment vice-president of the Permanent Commission of Industrial Property.

103 Q. 3. State whether or not you are familiar with the laws of France with respect to the law of trade-marks, trade names, unfair competition in manufactures and trade, &c., and if so state generally the nature and experience with respect to those subjects?

A. For twenty-five years I have had to study in the neighborhood of fifty thousand briefs relating to deposits or transfers of trade-marks or to lawsuits for imitation carried on in the principal parts of the globe. I summed up my knowledge on these matters in a large work (4,000 pages), "The Great International Dictionary

of Industrial Property," which contains the laws, the doctrine, and the jurisprudence on those questions of which this interrogatory is the object in all countries endowed with legislation on industrial property. I need not add that the French laws and jurisprudence are familiar to me.

Q. 4. State whether or not the manufacture and sale of artificial mineral waters composed of factitious ingredients in imitation and by the name of the waters of any natural mineral spring is permitted by the laws of France and if not state why? Give your reasons fully.

A. The royal ordinance of the 18th of June, 1823, which regulated the sale of mineral waters, contains no stipulation allowing a water artificially mineralized to be designated by the name of a corresponding natural spring. The ordinance confines itself to submitting the manufacture of artificial mineral waters to a ministerial authorization, which is only given after an examination of the formula of their preparation. In fact no manufacture of artificial mineral water was ever seriously tried. The failure of those who tried this new kind of industry was complete. One could not find in France in the trade any artificial mineral water. It is well understood that no one has ever thought of considering the exclusively effervescing waters [the waters simply charged with fixed air] so generally used in summer instead and in place of ordinary
104 water, as mineral waters. Nature, after all, does not furnish similar ones. This is said to avoid all misunderstanding in fact and in law. The French government recognized the necessity of dispelling any misunderstanding in this respect, and of putting the legal pharmacopœia which contained some formulas of artificial mineral water in harmony with the progressions of science; a decision of the executive power, given on the report of the minister of agriculture and of commerce and of the minister of public instruction, and dated the 5th of February, 1880, prescribes the remodelling of certain parts of the codex. Among the most important reforms, we must cite the one which suppresses even the designation "artificial mineral waters" in order to avoid any possible assimilation between absolutely distinct natural products [products of an absolutely different nature]. Here are the terms in which this most important reform was accomplished. "In accord with the consultative committee of public hygiene the commission of the codex have judged that it is opportune to have disappear from the French pharmacopœia the denomination, evidently improper, of 'artificial mineral waters,' and to keep simply the formulas of the saline 'solutés,' effervescing or non-effervescing, which are considered as medicines." The codex containing this decision was promulgated and rendered executory by a decree of the president of the Republic of the 13th of February, 1884. Since then no legislation has changed this state of things.

It results from this that if the ordinance of the 18th of June, 1823, continues in force, from the police regulation's point of view, there exist legally no longer any artificial mineral waters, but only saline "solutés," effervescing or non-effervescing to which it is forbidden

to apply of natural mineral-water springs having more or less analogy with them.

Q. 5. Do you know any other matter or thing of benefit or
105 advantage to the plaintiffs. If so, please state the same as if you were specifically interrogated thereunto?

A. It has been seen that in the opinion of the commission of the codex of 1880, and of the committee of public hygiene, the composition of natural mineral waters could not be reproduced in a laboratory. Since then new discoveries have confirmed the justice of this estimation. Thus it was that in the course of last year, they isolated in the waters of the Pyrenees, a certain quantity of argon gas, the presence of which had never been suspected, and which in all probability plays a very active part in the effect of the waters. They are on the traces of other discoveries, but what is better demonstrated from day to day is, that in the acknowledged impotency where science is of reproducing, [inability of science to reproduce] by the hand of man substances formed under the illimitable forces of nature, tribunals show themselves rightly and more and more disposed to consider as an imposture on the nature of the product, an artificial "soluti" decorated by the name of a mineral water.

Cross-interrogatories to be propounded to Charles Pierre Count de Maillard de Marafy, a witness called on behalf of the complainants under the above-named commission in the above-entitled cause.

1 Q. Is your answer to the fourth interrogatory based on statute, ordinance or on a decree of the courts of France? If so, please state particularly to which statute or statutes, ordinance or ordinances, decree or decrees you refer?

A. I have mentioned in the course of my answer to the interrogatory the dispositions [legal authorities] on which are based my conclusions. I could not but repeat what I have already said.

2 Q. Is it not true that the law of July 28, 1824, does not protect natural mineral waters and that such statute refers only to manufactured articles?

A. The law of July 28, 1824, only protects, in fact, the
106 name of the manufactured articles, but even before 1824, the use of the name of a natural water on an artificial water was illicit, and that, by application of the general principle inscribed in article 1382 of the Civil Code.

The use of the name of a natural mineral water on a water artificially mineralized, constitutes at the same time, an imposture on the conventional nature of the article sold, according to a happy expression of the court of Grenoble making part of article 423 of the Penal Code, and contingently, an indication capable of deceiving the buyer by application of paragraph 2 of article 8 of the law on trade-marks. It is this that the court of cassation has ratified on the conclusions of Attorney General Sarrut by a judgment rendered January 21, 1892, on a petition of the Syndicate of the Proprietors of Mineral Waters (Grand Dictionary of Industrial Property. See

"Imposture," p. 109). The delinquent had sought to have an artificial water of his manufacture taken for mineral water of "Eaux-Bonnes." The trade-mark had been imitated, but as it had not been deposited [registered] the offence of fraudulent imitation could not give place to prosecution [be made the subject of an action]. The delinquent could consequently only be condemned for having affixed the denomination of "Eaux-Bonnes" on a mineralized water of his own manufacture. It is in fact exclusively for this false indication that he was condemned. Such is the jurisprudence today. In vain one could object that the word artificial should prevent all confusion. In fact, it conveys nothing of the kind to a good number of buyers who only see in the designation the essential part, that is to say, the name of the natural mineral water. The word "artificial" is not in fact more significative than the word "imitated" or "imitation," "kind," "make," "process of," &c. Now, all these expressions preceding or following the name of a manufacturer, or that of a place of manufacture, are unanimously considered as captious by the French courts of justice as
107 being incapable of preventing confusion. All these reasons explain superabundantly why no industry exists in France for the exploitation of artificial mineral waters imitating the renowned mineral waters.

Q. 3. Is not article 1 of the decree of June 18, 1823, subjecting all manufacturers of or dealers in natural and artificial mineral waters to inspection still in force?

A. This ordinance has been modified in what concerns natural waters by the decree of January 28, 1860. It continues to receive its execution in all its dispositions which are not contrary to those of this last decree. It is hence still applicable in principle today, with regard to the rules of inspection, to the "solutis" of the 1834 Codex which hold the rule [fill the place], since that period, of the old artificial mineral waters. It is scarcely worth while to point out, of course, that the prescriptions of this ordinance relative to the control of the products mentioned should be today applied according to the spirit and the text of the decree of February 15, 1884, and that especially the inspectors must see that the manufacturers of these products abstain scrupulously from using the term "artificial mineral waters," and still more so, indications of their origin, such as Vichy, Vals, &c.

Q. 4. Is not the decree of November 21, 1823, obliging every manufacturer in the city of Paris to put upon each bottle his name and the kind of water contained in the bottle, still in force?

A. The decree pleaded [cited] does not exist. It is really a question of a decision given by the perfect of the Seine taken in execution of the decree of June 18, 1823, which regulates the execution for the department of the Seine.

Q. 5. Is not the manufacture of artificial mineral water recognized in France as a useful industry?

A. There does not exist, to my knowledge, any industry of this kind in France. On the one hand, the manufacturer would have all the doctors against him, and on the other, the natural mineral

waters are within the reach of every one at a relatively minimum price. [The public is in fact too enlightened in France not
108 to know that in the actual state of science and in particular of the opinion of the medical profession 'saline solutes' whatever they are, cannot be compared to natural mineral waters as regards therapeutic efficiency.]

Q. 6. Is not the decision in the case of Goir *v.* Pidot, Dall report, Reportoire 27, page 72, still good law in France?

A. It results from the considerations exposed in answer to the divers preceding questions, that this decision has no longer any legal value. On the one hand, the motives of the decision are not conclusive in fact. It is sufficient in fact to read this decision, anterior, it must not be forgotten, to the establishment of the railways (1840), to find out that it is based principally on the interest there was then of allowing people far from the springs to consume mineral waters at their places of residence. Now that interest no longer exists on account of the easy facilities of transport. Rightly, the decree of February 15, 1884, legally puts an obstacle in the way of actually invoking such jurisprudence.

(S'g'd) CH. DE MAILLARD DE MARAFY.

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter and sworn to by the witness this 27th day of March, 1897, before

NEWTON B. EUSTIS,
Commissioner and Interpreter.

EMBASSY OF THE UNITED STATES, *Paris, France,* } *ss:*

I, Newton B. Eustis, do certify that Charles Pierre Count de Maillard de Marafy, the witness, personally appeared before me on the 27th day of March, at 5.30 o'clock in the afternoon, at the city of Paris, and after being sworn to testify the truth, the whole truth and nothing but the truth, did thereupon depose to the matter contained in the foregoing deposition and did, in my presence, subscribe the same, and I further certify that I have subscribed my name to each half sheet thereof.

[SEAL.] NEWTON B. EUSTIS.

109 *Mr. Chatel's Translation.*

EXHIBIT A—BULLETIN DES LOIS NO. 59, PAGE 1199.

No. 553.

Law authorizing the concession of the exploitation of the springs and thermal establishment of Vichy (of the 10th of June, 1853).

Napoleon, by the grace of God and the will of the nation, Emperor of the French, to all present and to come, Greeting:

We have sanctioned and do sanction, have promulgated and do promulgate what follows:

Law.

Extract from the Report of Congress.

Congress has adopted the bill the tenor of which follows:

Sole article. The minister of the interior is authorized to concede directly, in the name of the State, to Messrs. Lebobe, Callou & Company the exploitation of the springs and of the thermal establishment of Vichy, for thirty-three consecutive years, on the terms and conditions of the book, stating on what conditions the concession is made, and which is annexed to the present law.

Resolved in public session, Paris, the 26th of May, 1853.

The president, (signed) Billault, the secretaries (signed) Ed. Dalloz, Macdonald, Duke de Tarente, Baron Eschasseriaux, Henry Dugas.

Extract from the Report of the Senate.

The senate is not opposed to the promulgation of the law
110 which authorizes the concession of the exploitation of the thermal establishment of Vichy.

Resolved in session at the senate-house, June 6, 1853.

The president, (signed) Troplong, secretaries (signed) Comte de la Riboisiere, A. Thayer, Baron T. de Lacrosse.

Seen and sealed with the senate's seal.

(Signed) BARON T. DE LACROSSE.

We command and order that the accompanying, sealed with the seal of State and published in the Bulletin Des Lois, be addressed to courts, tribunals and administrative authorities to be by them inscribed upon their registers, observed, and made to be observed; and our minister, secretary of state in the department of justice, is charged with overseeing the publication of the same.

Done at the palace of Saint Cloud, June 10, 1853.

(Signed) NAPOLEON.

By the Emperor, the minister of state.

(Signed) ACHILLE FOULD.

Seen and sealed with the great seal: The keeper of the seals, minister secretary of state in the department of justice.

(Signed) ABBATUCCI.

Book Stating the Conditions of the Concession of the Exploitation and of the Thermal Establishment of Vichy.

Article 1. The State concedes and leases for thirty-three years to run from the date of the promulgation of the law relative to the present concession to Messrs. Lebobe, Callou & Company the exploitation of the thermal establishment of Vichy with all its springs, its buildings, grounds and dependencies, with the exception of the building actually occupied by the managing director and his offices without any other exception or reserve, and including the
111 springs, the ownership of which will be ceded to the State in article 2. This concession remains in being subject to the charges, clauses and conditions following:

Article 2. Messrs. Lebobe, Callou & Company grant and cede to the State, to take effect from the date of the promulgation of the law relating to the present concession, the ownership of the springs hereinafter designated, to wit: First, the spring called Brosson, situated at Vichy, with the land necessary for its proper exploitation, both for constructing thereupon, if necessary, a reservoir, and for permitting its use by the public as drinking water. The administration reserves to itself the right to determine what shall be the boundaries of this land, as well as the size and location of the passages to lead to said spring from the Capucin's inclosure and from the park. Second, the spring "Des Dames," situated at Cusset, with the land in which it is bored. Third, and the spring of Hauterive with the lands and buildings which belong to it. The concessionaries guarantee within six months all titles, deeds, proofs of mortgages paid, satisfaction pieces or other necessary instruments which must be deposited in the offices of the State, said documents showing that the ownership of the real property which they ceded is properly established; that the price of it has been wholly paid and that they are free from all easement, mortgages and other earlier charges of every kind. The said grant is made by Messrs. Lebobe, Callou & Company with their warranty against eviction and re-entry and indemnity of any kind and whatever rights of action there may be to preceding proprietors as well as all others, and especially the damages and costs that Brosson Brothers claimed against the State, the principal of which has been admitted by a decision of the court, as well as the expenditures and costs attaching to this matter.

112 Article 3. (This article simply regulates the price of water and the price, time and duration of baths, etc.)

Article 4. The concessionaries shall pay to the State during the entire duration of the grant an annual return of one hundred thousand francs, payable in half parts every six months, of which the first payment shall be made at the end of the first half year of the life of the grant.

Article 5. The concessionaries will be charged with paying the Vichy hospital the amount today paid it by the State, amounting to 5 centimes for every litre of water sent for drinking purposes and coming from the springs belonging to the State. An account will be taken of this amount every three months by them and the hospital administration. If, contrary to every probability, it is decided against the State that it owes a payment upon the waters coming from the springs comprised in the grant made by Messrs Lebobe, Callou & Company, the latter must guarantee to pay the amount necessary to discharge the same.

Article 6. (This article merely regulates the supply of water and number of free baths to be given to soldiers.)

Article 7. (This article regulates the number of free baths to be given the clergy, teachers, &c.)

Article 8. The rights which may be of profit to the inhabitants of Vichy or others relative to the use of the thermal waters and the baths of the establishment shall be held by the concessionaries without their being allowed under this head any claim from the State. The baths given for nothing in such case shall be charged to the free baths that the concessionaries must put at the disposition of the administration under the term- of article 7.

113 Article 9. (This article simply states certain works which are to be done by the concessionaries at their expense within five years. Among them is included section 8, the construction of shops for bottling, corking, packing, shipping and selling the waters.)

Article 10. (This article requires the concessionaries to deposit a sum of two hundred thousand francs with the State for the completion of the works enumerated in article 9, which sum shall be refunded after the works are done.

Articles 11, 12, 13 and 14 (prescribe certain obligations upon the concessionaries, such as paying the various contributions which may be levied upon the thermal establishment of Vichy, making an inventory of the personal property belonging to the State of which it takes possession under the concession, &c., &c.)

Article 15. The concessionaries will be put in the place and position of the State in all that which concerns the right and publications resulting from the agreement with Mr. Strauss for the exploitation of the "salons" up to January 1, 1856.

Article 16. The concessionaries are not, without the express consent of the administration, to cede, in all or in part, their right to the exploitation of the thermal establishment, including therein the springs, buildings and lands designated in article 2. In case they wish to add new partners to their firm the articles of their copartnership must be approved by the administration.

Article 17. (This article requires the concessionaries to insure the buildings.)

114 Article 18. The administration shall have the power to suppress one or several springs when it judges it necessary to assure the preservation or proper exploitation of one or several others. It will by reason of this suppression become liable for no indemnity to the concessionaries.

Article 19. The waters for use as beverage shall be drawn, bottled, corked, sealed and shipped by the concessionaries under the oversight of the administration. Glass bottles shall be substituted for earthenware bottles now in use. The form of bottles, corks and the method of sealing must be approved by the administration. The concessionaries are bound to take at cost price the earthenware bottles and corks which are in the store of the establishment. They shall also take at current prices the "combustible" supplied or bought, but not delivered, for the use of the year.

Article 20. Every shipment of mineral water must be accompanied by an invoice certificate certifying that it has been drawn from the spring. This certificate bill will be delivered by the concessionaries and viseed by the government commissioner.

Article 21. The waters shall be shipped in barrels only with the authorization of the administration. They shall be delivered in the state in which they are taken from the springs and without any adulteration. If, for importations to distant countries, the inspecting physician appointed by the administration considers it necessary to introduce a certain quantity of carbonic-acid gas, the concessionaries must not sell water thus prepared except under the supervision of the government commissioner and under a special label and capsule indicating the addition of the gas. The tariff of these special waters must be approved by the administration.

Article 22. The concessionaries must conform to the existing rules as well as to all which shall be passed having to do with the mineral-water business. However, no modification can be made in the particular rules for vichy without the concessionaries having been given a chance to present their opinions.

Article 23. The government will appoint under the title of commissioner, or some other title, at the establishment an agent charged to represent the administration and particularly to watch, in its name, over the proper, full and fair execution of the charges, articles and conditions of the concession. The government reserves, furthermore, the right to have the said establishment inspected whenever it considers it useful. The concessionaries will be obliged to give government agents all necessary facilities for the accomplishment of their duties.

Article 24. The concessionaries are especially required to facilitate for the inspecting physicians appointed under the ordinance of the 18th of June, 1853, the accomplishment of the duty imposed upon them by said ordinance and by the rules of the establishment in everything which concerns the public health. The concessionaries must yield to the suggestions which are made by the government agents or the inspecting physicians each according to his duty, for the purpose, of assuring the preservation and health-giving qualities of the waters, preventing the change in temperature and composition in the waters of the various springs, of having executed with exactness the prescriptions of the doctors, of keeping in a convenient state, and bettering, when possible, the apparatus intended for the distribution and application of the waters according to the different methods by which they are applied, of seeing that the service in all

its branches, especially in that which has to do with the preparation of the baths, the hours assigned for the sick, the warming of
116 the linen, the good condition of the bath-rooms, shall be carried on with care and punctuality according to the order of application and without giving any preference.

Articles 25, 26, 27, 28 and 29, (have to do with the appointment of physicians, fix certain penalties in case of non-compliance with the conditions by the concessionaries and regulate procedure, &c., in case of non-compliance).

Seen and to be annexed to a bill adopted at the session of the 26th of May, 1853.

The president (signed) Billault. The secretaries (signed) Ed. Dalloz Macdonald, Duke de Tarente, Baron Eschasseriaux, Henry Dugas.

Seen and to be annexed to the law and sealed with the seal of the senate. The senator secretary of the senate,

(Signed) BARON T. DE LACROSSE.

Seen and to be annexed to the law of the 10th of June, 1853.

The minister of state,

(Signed) ACHILLE FOULD.

Certified, correct transcript, Paris the 18th of June, 1853.

The keeper of the seals, minister, secretary of state in the department of justice.

ABBATUCCI.

117 EXHIBIT B—BULLETIN DES LOIS, No. 1202, PAGE 661.

No. 12260.

Law ratifying an agreement between the minister of agriculture, commerce, and public works and the Compagnie Fermiere de L'Establissement Thermal de Vichy (of the 7th of May, 1864).

Napoleon, by the grace of God and the will of the nation, Emperor of the French, to all present and to come, Greeting:

We have sanctioned and do sanction, have promulgated and do promulgate what follows:

Law.

Extract from the Report of Congress.

Congress has adopted the bill of which the following is the tenor:

Sole article. The agreement between the minister of agriculture, commerce and public works in the name of the State and the Compagnie Fermiere de L'Establissement Thermal de Vichy is ratified and provisionally approved by imperial decree.

Resolved at a public session at Paris, April 20, 1864.

The president (signed) Duc de Morny, the secretaries (signed) Comte Le Peletier d'Aunay, Comte Joachim Murat, H. Busson-Billault, Severin Abbatucci.

Extract from the Report of the Senate.

The senate is not opposed to the promulgation of the law approving an agreement made between the minister of agriculture, commerce and public works and the Compagnie Fermiere de L'Etablissement Thermal de Vichy.

118 Resolved and voted at a session at the senate-house, May 3, 1864.

The president (signed) Troplong, the secretaries (signed) A. Le Roy de Saint-Arnaud, Comte de Bearn, Baron T. de Lacrosse.

Seen and sealed with the senate seal, the senator secretary.

(Signed) BARON T. DE LACROSSE.

We command and order that the accompanying, sealed with the seal of the State and published in the *Bulletin Des Lois*, be addressed to courts, tribunals and administrative authorities to be by them inscribed upon their registers, observed and made to be observed, and our minister, secretary of state in the department of justice and religion is charged with the supervision of the publication thereof.

Done at the Tuileries palace May 7, 1864.

(Signed) NAPOLEON.

By the Emperor,

The minister of state (signed) E. ROUHER.

Seen and sealed with the crown seal, the keeper of the seals, minister, secretary of State in the department of justice and religion.

(Signed) J. BAROCHE.

Agreement between the minister of agriculture, commerce, and public works in the name of the State and the Compagnie Fermiere de L'Etablissement Thermal de Vichy, the said company being represented by Messrs. Deniere, Germain Thebaut, and Fere, president and members of the board of directors, delegated by the said board for this purpose to be ratified at a general meeting of the stockholders within six months.

The following was offered and agreed:

Articles 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 and 14. (In these articles the company agrees to build a casino and other buildings within three years, to pay so much for repairs to river banks, etc., to re-

119 build and enlarge certain buildings, to give up to the State certain lands in the "Lardy" inclosure, and the minister agrees to give up to the Vichy Company certain land shown upon a map and agrees upon certain new prices to be charged for the water and the baths different from those given in the book of conditions annexed to the law of June 10, 1853.)

Article 9. Independently of the advantages granted for the benefit of the company in article 7 above, the duration of the cession fixed at thirty-three years by the 'conditions book,' annexed to the

law of June 10, 1853, is increased by eighteen years, making in all fifty-one years.

Article 10. All the constructions and the establishments which the society is bound to make or makes during the life of the cession shall be immediately considered as part of the thermal establishment, and will revert to the State at the expiration of the cession without any restriction or reserve, and without any right of indemnity arising against the State to the profit of the company.

Article 13. All the clauses of the conditions book annexed to the law of the 10th of June, 1853, and which are not inconsistent with the present agreement, shall continue to receive full and entire execution.

Seen and to be annexed to a bill adopted by Congress in its session of April 20, 1864.

The president (signed) Duc de Morny. The secretaries (signed) Marquis de Talhouet, Comte le Peletier d'Aunay, Severin Abbatucci, Henry Noubel.

Seen and to be annexed to the law which approves the agreement made between the minister of agriculture, commerce and public works and the Compagnie Fermiere de l'Etablissement Thermal de Vichy.

The senator, secretary of the senate.

(Signed) BARON T. DE LACROSSE.

Seen and to be annexed to the law of May 7, 1864.

The minister of state.

(Signed) E. ROUHER.

120 EXHIBIT C—NATIONAL ARCHIVES.

Confirmation of the Gift of a House to the Vichy Hospital, Together with Additions to Rights in Connection with the Mineral Waters.

Louis, by the grace of God, King of France and Navarre, to our beloved and faithful counselors, the gentlemen holding our parliamentary courts at Paris, and to all our other officers and *judges* whom it shall concern, Greeting:

Our dear and well-beloved directors and administrators of the hospital of Vichy, and Dr. Chomel, who has been recommended to us by Mr. Perrier, our head physician, for the purpose of advising us as regular superintending physician of the waters, baths, springs, mineral and medicinal, of our town of Vichy, have very humbly represented to us that Mr. Fouet, the last owner and peaceful holder of the position of supervisor of the said waters, enjoying by law 12 deniers for each bottle of 3 chopines of the water, by the measure of our good town of Paris, drawn at said place, Vichy, and taken to said Paris and other parts of our kingdom, on the condition on his part of keeping the house and goods, chattels and dependencies in thoroughly good state of repairs; that the said Fouet, being dead without having made many repairs that should have been made

both to the said house and to the cellars which are used for giving the douches, it is necessary not only to begin work on these without delay, but also it is quite necessary—considering the great number of persons of both sexes that flock from everywhere to take the waters, and the lack of accommodations for receiving them in the said baths, in which there are only two cellars for giving the douches, of which one serves for the general public and the other for the poor—to add to the baths a second cellar and a room for the public
in order that persons of the two sexes may be bathed and
121 douched at one time without mingling together, and that all indecencies may be avoided, that for the accommodation of the poor who betake themselves there in great number, it would be advisable to build another small room adjoining that of the bath, to belong to them and which should be used by the sisters of charity in the said hospital as a place for keeping the linen and other things necessary for the use of the poor; also to have deepened by two or three feet the old cellars in which are the douches and the channels which serve for the discharge of the waters; and that moreover it would be of great convenience both for the public interest and the relief of the poor that the superintendent of said waters should have his apartments near the baths so that he might be able properly to prescribe the waters for the sick and visit the poor in their need.

All of which additions, added to the indispensable repairs which must be made, would cost a considerable sum that neither the said hospital nor Dr. Chomel can be in a position to furnish.

And the said directors and administrators, wishing on their part to contribute to the extent of their ability to the relief of the poor and for the public good, have, under the said circumstances and subject to our good pleasure, by a contract before Palletan and his colleagues, notaries, at said Vichy, March 8th last, given, granted, quitclaimed, and made over to the said Mr. Chomel in the said name of superintendent of the said waters, to him and his successors forever, a house with a *porte-cochere* of a value of two "million" situated in the Place des Bains in said Vichy, consisting of two suites of apartments, a court, garden, carriage-house, stable and all the dependencies of the same, and whatsoever is set forth in said contract as belonging to said hospital under a judgment in its favor by a decision of the Chastellan of Vichy, July 18, 1715, to serve thenceforth as a lodging-house for the said Mr. Chomel and his successors in the said superintendency, and to be enjoyed as property
belonging to them; the gift, grant, &c., of which the said
122 Chomel, under the said name, for himself and his successors has accepted, subject to our good pleasure, by certain articles executed before Cuesdon and his colleague, notaries at the Chatelet at Paris, March 24th last, subject to the charges, clauses and conditions of said contract. And he is by the said articles bound to make all the repairs and additions hereinbefore set forth.

But the facts respecting this grant and the restoration of the said baths being made public, a greater number of poor will come, which will cause a more considerable expenditure than in the past,

from which the hospital must not be allowed to suffer without assistance. That on his part the said Mr. Chomel, in accepting the cession of the said house and making the proper additions, which will amount to at least five or six thousand francs, will not be able to furnish this sum; considering that the right to 12 deniers a bottle of water that he has the privilege of levying produces at the most five hundred francs a year, part of which he is obliged to pay to spring attendants and janitors besides making all the repairs for which his predecessor has been held responsible for the payment, the said directors and administrators and the said Chomel have very humbly begged us, in order to give them a means of giving to the public and the poor the advantages which come from the waters, that we allow them to levy and take in the future two sols a bottle of water of 3 chopines, Paris measure, drawn at said place Vichy and transported to said town of Paris and all other places in our kingdom outside in addition to the 12 deniers which have always been levied by the superintendent of the said waters, of which two additional sols 18 deniers shall belong to the hospital to indemnify it for the gift and cession of the said house and its dependencies and to take for it the place of subsidies or endowments and to keep it from undergoing the expenditure which it will be obliged to make for the relief of the
123 poor who take the baths hereafter; and this the said hospital shall enjoy forever, free and quit of repair claims, undertakings and other charges and levies of whatsoever nature incurred by reason of said houses, baths and cellars, channels, wages of spring attendants and janitors and all other things appertaining to the baths, in one of which set aside for the poor the latter will be bathed and douched free of charge and of this the hospital shall have free and full and absolute charge under the direction of the said superintendents, with the sole condition that the said hospital shall furnish for the use of the poor the beds, linen, wood and other things necessary for the baths. And the six other deniers shall be and belong to the said Chomel upon the condition which he has suggested of making additions to the said baths; that is to say, to the public bath by a room and one cellar in order that persons of the opposite sexes may be douched at the same time without being thrown together, and to the baths of the poor by a little room adjoining that set apart for them for the use of the sisters of charity for putting away the linen and other things necessary for the use of the poor, and to have the old cellars deepened by two or three feet and the channels which are used for the discharge of the waters. Which additions shall be made yearly and to as great an extent as is possible, keeping within the said 6 deniers, unless the said Mr. Chomel considers it advisable to make advances in order to have the work done, in which case it will be allowable for him to borrow the necessary amount to bond and hypothecate the said 6 deniers by preference and privilege before all other creditors for the guarantee of those from whom the loans are obtained.

Realizing that the said additions will require more considerable expenditure than in the past and that the persons who will come

hereafter in greater numbers to the said waters will give the said superintendent very much more to do after the said additions
124 shall have been made and the borrowed deniers paid back, the said Mr. Chomel and his successors shall enjoy forever the old sol and the 6 deniers added thereto, on the condition that he and his successors maintain the said house, baths, cellars and channels, and other things dependent thereon as the good father of a family, pay the spring attendants and janitors and pay all the charges and levies to which the said house and baths can be held, of whatsoever nature they may be and in such a manner that the said hospital cannot be held, sued or annoyed for any reason or on any pretext whatsoever.

And wishing to contribute to all that may be of advantage to the public and particularly to the poor, we have this day offered a decree in our council of State, being ourselves present, in which we have explained our intentions and for the execution of which we have ordered that all necessary letters patent be issued.

For these reasons and others, having had our letters patent exhibited in our council of December last, giving the general superintendency of the mineral waters of our kingdom into the charge of our first physician, the nomination having been made to us by our first physician of the said Chomel for our regular medical superintendent of the waters of the said Vichy, Feb. 18th last, the contract of gift and grant of the said house of March 18th last, the note of acceptance of the said gift by the said Chomel the 24th of the said month, the copy of the securities of the said Fouet, July 10, 1664, two decrees of our grand council of April 18, 1685, and March 26, 1686, serving as rules for the management of said waters, together with the said decree attached under the seal of our chancellor, and upon the advice of our very dear and beloved uncle, the Duke of Orleans, regent, of our very dear and beloved cousin the Duke of Bourbon, of our very dear and beloved uncle, the Duke of Maine, our very dear and beloved uncle, the Count of Toulouse, and other peers of France, the great and notable persons of our king-
125 dom and of our own special grace, full power and royal authority, we have confirmed, approved and authorized, and do approve and authorize the said contract of gift which will be executed according to its form and tenor.

And in order that over and above the old right to 12 deniers that the superintendent of our waters levied on each bottle of 3 chopines of water, Paris measure, taken at said place Vichy and transported to said Paris and other places of our kingdom, there will be hereafter taken for each bottle of like measure of the said water 2 sols, of which 18 deniers shall belong to the said hospital forever, free and discharged of all repairs, additions and other charges and levies on account of the said house, baths, cellars, channels, payment of spring attendants and janitors, and in every other way from all manner of things whatsoever, the said hospital furnishing for the use of the poor, only the beds, linen, wood and other things necessary for the baths which are set aside for them in the said hospital, of which the said hospital shall have the sole and entire disposal, subject to the direction of the

said superintendents. Which 18 deniers shall take the place of the endowment of the said hospital, and in order to give them a means of supplying the poor who shall come hereafter to the said baths with more conveniences than they have had in the past. We order likewise that the 6 remaining deniers shall be levied by the said Chomel upon the condition on his part that he shall make additions to the said baths, that is to say, to the public bath by a room or cellar such that persons of opposite sexes may bathe without being thrown together, a room to be made adjoining that set apart for the poor for the use of the sisters of charity for putting away the linen and other things necessary for the use of the poor, and old cellars and channels which serve for the discharge of the waters to be deepened two or three feet; which additions shall be made yearly
126 so far as may be done within the said 6 deniers unless the said Mr. Chomel considers it advisable to make advances for the purpose of having them finished at once, in which case we allow him to borrow the amounts necessary and to bond and hypothecate the 6 deniers by the privilege and preference over all other creditors for the guarantee of those who have made the loan, and realizing that the said additions will require more considerable maintenance than has been required in the past and that the persons who will come hereafter in great numbers to the said waters will give the superintendent very much more to do.

It is our wish and desire that after the said additions shall have been made and the borrowed deniers refunded, the said Mr. Chomel and his successors shall enjoy forever the old sol and the said 6 deniers which shall be added thereto, upon the condition on his part and that of his said successors that they shall maintain the said houses, baths, cellars, channels and other things dependent thereon in good order, pay the spring attendants and janitors and acquit all charges and levies of which the said house and baths may be held, of whatsoever nature they may be, so that the said hospital shall not be capable of being sued or troubled for any reason or upon any pretext whatsoever.

So we command that you file these presents and that the said hospital and the said Mr. Chomel and his successors enjoy and use the same freely and peacefully and forever, and terminating and causing to be terminated all difficulties and objections notwithstanding anything whatsoever to the contrary.

For such is our pleasure.

Given at Paris, March 23, the year of grace 1716 and of our reign the first.

(Signed) LOUIS.

By the King, the Duke of Orleans, regent (present) Phillippeau.

127 Filed: Seen by the procurer general of the King; to be carried out according to its form and tenor and to be enjoyed by the parties according to its purposes and contents according to the decree of this day.

Paris, parliament house, August 31, 1717.

(Signed) COLBERT.

The present transcript collated and revised by the chief of the section, whose signature is opposite and by him found to conform with the rolls of parliament in the national archives, judicial section, under the title "X 1A 8718, at folio 223" has been delivered by him, the director of the archives, to be used and to be of value for whatsoever purpose desired.

In proof of which we have signed the said transcript as a correct copy and placed upon it the seal of the archives.

Done at Paris, March 13, 1877.

THE DIRECTOR OF THE RECORDS.

Compared; the chief of this judicial section,

EM. CAMPARDON.

Exhibit D.

Statement of the Shipments of Vichy Since 1853.

Years and bottles.

1853, 461,894; 1854, 481,312; 1855, 563,742; 1856, 662,769; 1857, 699,662; 1858, 754,210; 1859, 946,346; 1860, 1,087,000; 1861, 1,193,073; 1862, 1,311,785; 1863, 1,502,940; 1864, 1,678,400; 1865, 1,932,672; 1866, 2,094,919; 1867, 2,011,808; 1868, 2,416,369; 1869, 2,456,357; 1870, 2,159,495; 1871, 2,252,234; 1872, 2,767,701; 1873, 2,901,045; 1874, 2,887,629; 1875, 3,276,940; 1876, 3,408,098; 1877, 3,461,461; 1878, 3,399,437; 1880, 4,035,088; 1881, 4,519,235; 1882, 5,070,685; 1883, 5,336,209; 1884, 5,745,603; 1885, 5,939,428; 1886, 6,282,559; 1887, 6,501,227; 1888, 6,828,278; 1889, 7,028,536; 1890, 7,349,117; 1891, 7,722,521; 1892, 8,253,582; 1893, 8,419,749; 1894, 8,776,777; 1895, 9,964,387.

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Exhibit E.

Statement of the Shipments Made by the Vichy Company to the United States Since 1853.

Years and bottles.

1853, 316; 1854, 500; 1855, 600; 1856, 2,100; 1857, 2,560; 1858, 2,700; 1859, 800; 1860, 5,000; 1861, ——; 1862, ——; 1863, 4,550; 1864, 3,500; 1865, 1,000; 1866, 29,250; 1867, 41,568; 1868, 6002; 1869, 26,450; 1870, 50,950; 1871, 52,750; 1872, 67,235; 1873, 107,850; 1874, 85,150; 1875, 100,525; 1876, 96,675; 1877, 107,250; 1878, 89,800; 1879, 96,750; 1880, 125,050; 1881, 93,765; 1882, 166,400; 1883, 146,200; 1884, 186,000; 1885, 129,100; 1886, 257,000; 1887, 246,400; 1888, 293,000; 1889, 326,000; 1890, 271,000; 1891, 237,225; 1892, 527,550; 1893, 298,500.

EXHIBIT F—THE CONSTITUTION AND BY-LAWS OF THE VICHY COMPANY.

(These appear also annexed to certain laws in evidence, as for instance Exhibit G. They will be found translated in connection with the translation of Ex. G, so far as they may seem material in any way.)

129 EXHIBIT G—BULLETIN DES LOIS NO. 912, PAGE 52.

No. 14253.

Imperial decree authorizing the formation of a "societe anonyme" under the name of the "Compagnie Fermiere de L'Etablissement Thermal de Vichy" (of the 27th of December, 1862).

Napoleon, by the grace of God and the will of the nation, Emperor of the French, to all present and to come, Greeting:

Upon the report of our secretary minister of state in the department of agriculture, commerce and public works.

Seen article 29 to 37, 40 and 45 of the Commercial Code.

Seen the law of June 10, 1853 authorizing the concession in the name of the State to Messrs. Lebobe, Callou & Company of the exploitation of the springs and thermal establishment of Vichy.

Seen the condition book annexed to said law, especially article 16 thereof.

Seen the recommendation of our secretary of finance of date August 6, 1862 and having heard our counsel of State we have decreed and do decree as follows:

Article 1. The societe anonyme formed at Paris under the denomination of Compagnie Fermiere de L'Etablissement Thermal de Vichy is authorized. The statutes of the said society as contained in the articles of incorporation drawn up on the 22nd of December, 1862, before M. Acloque and his colleague, notaries at Paris, which articles of incorporation will be annexed to the present decree and approved.

Article 2. The present authorization may be revoked in
130 case of violation or non-execution of the statutes approved without prejudice to the rights of third parties.

Article 3. The society must remit every six months a statement of its condition to the minister of agriculture, commerce and public works to the prefects of the department of the Seine and of the Allier, to the prefect of police, to the chamber of commerce and to the clerk of the tribunal of the Seine.

Article 4. Our minister secretary of state in the department of agriculture, commerce and public works is charged with the execution of the present decree which will be published in the *Bulletin des Lois*, in the *Moniteur* and in the *Journal of Court Notices* of the department of the Seine and of the Allier and shall be filed

together with the articles of incorporation with the clerk office of the tribunal of commerce of the Seine.

Done at the Tuileries palace, December 27, 1862.

(Signed) NAPOLEON,
By the Emperor.

The minister, secretary of state in the department of agriculture, commerce and public works.

(Signed) E. ROUHER.

Before M. Acloque and his colleague notaries at Paris, undersigned, appeared: M. Arthur Callou, property-holder, living at Paris, No. 5 Rue Laffitte; and M. Ernest Vallee, property-holder living at Paris, 15 Place de la Madeleine, doing business as sole trustees of the company "en commandite" A. Callou, Vallee & Company, the head office of which is at Paris, No. 2 Rue Drouot and No. 22 Boulevard Montmartre, who made statements as follows:

According to the law of date June 10, 1853, Messrs. Le-
131 bobe, Callou & Company were declared concessionaries of the exploitation of the thermal establishment of Vichy (Allier), with all its springs, buildings, lands and dependencies, in conformity to certain clauses and conditions set forth in the conditions book annexed to said law.

On the 27th of the same month of June, 1853, there was formed by articles agreed upon in the office of M. Persil, a notary of Paris, a company "en commandite," under the firm name of Lebobe, Callou & Company for the exploitation of the said concession and Messrs. Lebobe & Callou were named as sole trustees responsible and good for the debts of the company.

Article 49 of the by-laws of the said society is as follows:

"The trustees shall use all due diligence when they think it opportune to obtain the conversion of the present company into a société anonyme. For this purpose the most liberal powers are given by the stockholders to make when necessary any modifications of the by-laws which may be judged necessary by competent authority."

By the terms of a resolution of the stockholders of said society at a special meeting September 30, 1858, Messrs. A. Callou and Vallee, deponents, were named trustees of the said company replacing the former Messrs. Callou, his father, retired, and the second, Messrs. Lebobe, deceased, and as such, invested with all the statutory powers offered upon the old concern under the new name A. Callou, Vallee & Company. In accordance with these powers, deponents submitted to a general meeting on February 15, 1862, and there *was* thereupon accepted the revised statutes of the Société Anonyme Fer &c. Today acting in virtue of the same powers they have decided to announce the following definite revision of the said statutes.

132 CHAPTER 1.—*Constitution of the Company.*

Article 1. There is formed of the owners of all the assets hereinafter mentioned a "société anonyme" under the denomination of "Compagnie Fermiere de L'Establissement Thermal de Vichy."

Article 2. The object of the company is the exploitation of the concession of the springs and of the thermal establishment of Vichy, the manufacture and sale of the natural products of the Vichy waters and the business connected with all natural mineral waters French and foreign. The object of the company may be extended to other objects connected in any way with the exploitation and business mentioned hereinafter within the terms and under the conditions of article 33.

Article 3. (Has to do with the domicile of the company.)

Article 4. The duration of the company shall be the same as that of the concession, which will end June 10, 1886. This duration may be prorogued in form as prescribed by article 33 below. It will begin to run from the date of the decree of authorization.

TITLE 2.—*Company Assets.*

Art. 5. The deponents in the name of the "societe" A. Callou, Vallee & Company deliver to the societe anonyme.

First. The concession of the exploitation of the thermal establishment of Vichy with all the old and new springs which have to do with it, the buildings, lands and dependencies such as result from the law of June 10th, 1853, from the conditions book annexed to said law, and the enjoyment during the duration of the con-
133 cession of the working stock furnished by the State for the service of the spring baths, douches, piscines, reservoir, laundry, &c., and the putting up of the waters for export.

Second. The property in the materials and in the furniture and in all movables in the offices, workshops, laboratories and stores of the company in Paris and in the branches, as well as at Vichy, including the movables used in the service of the baths, besides all of the same kind which are to be returned to the State at the expiration of the concession and included in the preceding article.

Third. The buildings, lands, store bought by the company "en commandite," which are designated as follows: A piece of property at Vichy at the corner of the Nimes road and the Celestines bath * * * (etc.); various parcels of lands fit for building situated near the Lardy property along the Nimes road * * * (etc.), and two little pieces of property situated at Hauterive and at Vaisse near Vichy * * * (etc.).

Fourth. The letters patent taken out by Messrs. Callou & Vallee on the 31st of July, 1860, for a new mode of extracting mineral salts from the Vichy waters.

The places of business both at Vichy and at Paris, 22 Boulevard Montmartre and 64 Rue Vieille-du-Temple, and 6 Rue Haxo, Marseilles, in which establishments are at the day intermingled that business owned under the name of "Maison Brosson," existing for-

merly at Paris, No. 6 Rue des Pyramides, the furniture and all movals into said establishments of the rents paid in advance.

(Fifth and sixth sections describe certain funds and names.)

(There follow statements as to inventories, &c., required and a declaration that the assets are free from debts and mortgage, except for certain sums amounting to $679,800.)

134 Art. 6 and 7 (state certain rights and duties of the new company and among others)

"It must especially conform itself to the law of June 10, 1853, relating to the concession and the conditions of the book annexed thereto."

Titles 3, 4, 5, 6 and 7. (Have to do wholly with the stock of the company, the internal administration, general stockholders' meeting and the rights of stockholders, annual reports, dividends, &c., and the dissolution, liquidation or otherwise of the company.)

Which articles made and agreed upon in Paris in the office of M. Acloque on the 22nd of December, 1862, the deponent signed with the notary after a reading thereof.

The following is endorsed:

"Filed at Paris 5th office December 22, 1862, folio 40 Recto cases 5 to 8, 5 francs received, double decimo, one franc.

(Signed) LAFFEUILLADE."

Seen and to be annexed to the imperial decree of date December 27, 1862, and filed under the number 885.

The minister of agriculture, commerce and public works.

(Signed) E. ROUHER.

135 EXHIBIT H—BULLETIN DES LOIS No. 1053, PAGE 102.

No. 16742.

Imperial decree approving modifications in the statutes of societe anonyme, formed at Paris under the name of Compagnie Fermiere de L'Establissement Thermal de Vichy, of the 25th of June, 1864.

Napoleon, by the grace of God and the will of the nation, Emperor of the French, to all present and to come, Greeting:

Upon the recommendation of our minister secretary of state in the department of agriculture, commerce and public works.

Seen the decree of date December 27, 1862, authorizing the formation of a societe anonyme formed in Paris under the name of Compagnie Fermiere de L'Establissement Thermal de Vichy and approving the statutes of the same.

Seen the resolutions adopted at a general meeting of the stockholders on the 9th of November, 1863, called for the purpose of modifying the said statutes; and the State counsel having been heard we have decreed and do decree as follows:

Art. first. The modifications of the statutes of the societe anonyme

formed at Paris under the name of Compagnie Fermiere de L'Etablissement Thermal de Vichy are approved as they are contained in the articles agreed upon, June 14, 1864, before M. Acloque and his colleague, notaries at Paris, which articles will be annexed to the present decree.

Second. Our minister secretary of the state in the department of agriculture, commerce and public works is charged with the
136 execution of the present decree which will be published in the *Bulletin Des Lois*, printed in the *Moniteur* and in a journal of court notices of the departments of the Seine and of the Allier and filed together with the modifying articles with the clerk's office of the tribunal of commerce of the Seine.

Done at the Tuileries, June 25, 1864.

(Signed) NAPOLEON,
By the Emperor.

The minister secretary of state in the department of agriculture, commerce and public works.

(Signed) ARMAND BEHIC.

Before M. Acloque and his colleague, notaries at Paris, undersigned; appeared M. Guillanne Deniere, president of the tribunal of commerce of the Seine, residing at No. 4 Rue de Rougemont, Paris; M. Victor Hyacinthe Fere, a member of the municipal board, residing at 50 Rue Sainte-Croix-de-la-Bretonnerie, Paris; and M. Germain-Nicholas Thibaut, member of the municipal board, residing at No. 41 Rue du Sentier, Paris, acting in the name and as members of the board of directors of the societe anonyme formed at Paris under the name of Compagnie Fermiere de L'Etablissement Thermal de Vichy who stated the following:

An agreement was concluded of date April 29, 1863, between the minister of agriculture, commerce and public works in the name of the State and the Compagnie Fermiere de L'Etablissement Thermal de Vichy, represented by Messrs. Deniere, Germain, Thibaut and Fere, president and members of the board of directors, delegated by said board for this purpose, ratification by a general meeting of stockholders within six months reserved. This agreement was filed at Paris May 26, 1863, folio 23, Recto, case 8 by Badereau who received 2 francs, 40 centimes for a decimo.

In accordance with one of the clauses of this agreement,
137 the duration of the grant of the thermal establishment of Vichy, fixed at 33 years by the conditions book annexed to the law of June 10, 1853, was augmented 18 years and brought to 51 years. This agreement was provisionally approved by imperial decree of date May 23, 1863. The resolution of the general stockholders' meeting of the aforesaid company of date November 9, 1863, taken in conformity to article 23rd of the statutes, has approved the undertakings made by the board of directors in the name of the company to the State such as resulted from the agreement and from the decree aforesaid, and from letters between the company and the minister of agriculture, commerce and public works, dated

October 21st and 26th, 1863, and November 5th, 7th and 8th following. Copies of said resolutions and of said letters are herewith annexed. By the same resolution the board of directors was authorized to issue three thousand four hundred and thirty-two new shares, to bear numbers representing a total of eight thousand; and the general meeting adopted modifications to be added to the statutes in view of the extension of the duration of the company and the addition of its capital. Absolute power was given to the board of directors to present the said modifications for the approbation of the government and to add to the statutes the changes which should be required by the administration. The aforesaid agreement was ratified by a law of the 7th of May, 1854.

(Following are given at length modifications referred to, including):

"Art. 4. The duration of the societe will be the same as that of the concession. This duration may be prorogued in form, as prescribed by article 33 below. It will begin to run from the date of the decree of authorization."

Which articles, made and agreed upon in Paris, at the chief
138 office of the company, June 14, 1864, all the deponents having signed with the notaries after a reading. The following was endorsed thereon: "Filed at Paris, 5th office, June 15, 1864. Folio 87 Recto cases 6 and 7, received 2 francs, the double decimo 40 centimes.

(Signed) LAFFEUILLADE."

Seen and to be annexed to an imperial decree to date June 25, 1864. Filed under the number 507.

The minister of agriculture, commerce and public works.

(Signed) ARMAND BEHIC.

EXHIBIT I.

(Copy.)

Ministry of agriculture, commerce, and public works.

Decree.

The minister secretary of state in the department of agriculture, commerce and public works. Seen the consular decree of the 29 Floréal in the year VII and the royal ordinance of June 18, 1823, containing rules for the management of natural and artificial mineral waters; seen the report of the advisory committee of public health of date December 1, 1856; deeming that the administration should see to it that the exploitation of mineral waters should be governed by regulations which have for their end to assure the genuine and good quality of the products of the springs; that among these products must be included the salts obtained by evaporation and intended in a certain measure to replace the natural mineral water; seen the report of the chief of the division of interior commerce.

139 *Decree.*

Article first. The company concessionary of the exploitation of the mineral-water springs depending on the thermes of Vichy will be required in future to submit to the supervision of the inspecting physician of this establishment or any other representative delegated by the administration, its methods of manufacture used in connection with its salts extracted from the natural mineral waters of Vichy.

Article second. The bottles or other receptacles containing these salts must be marked with the seal of the public administration and accompanied by a certificate of origin as is prescribed by the ordinance for use in connection with the putting up of natural and artificial mineral waters.

The labels, advertisements and prospectus must be submitted to the inspecting physician who will not allow denunciation of or any statement contradictory to the results furnished by chemical analysis and to the certain opinions that science holds to as to the comparative values of natural or artificial mineral waters.

Article third. The prefect of the department of the Allier, the government commissioner at the thermal establishment of Vichy and the inspecting physician of the same establishment are charged each with the execution of that part of the present regulation which concerns him.

Paris, March 2, 1857.

(Signed) E. ROUHER,

For official copy.

The Secretary General.

(This is certified to and the signature certified to as required by French law.)

Exhibits J, K and L (are advertisements of the Vichy products put up with the goods).

	Grande Grille.	Puits Chomel.	Lucas.	Hopital.	Grotte des Celestins.	Anciens Celestins.	Nouveaux Celestins.	Pan.
Acide carbonique des bicarbonates	3.3748	3.3914	3.4200	3.5324	3.3205	3.2656	3.2645	3.5197
Acide carbonique libre	0.8494	0.9729	1.6798	1.1770	0.6199	1.6419	1.7765	1.6936
	430 c.c.	492 c.c.	350 c.c.	595 c.c.	314 c.c.	830 c.c.	898 c.c.	857 c. c.
Carbonate nutre de sodium	3.5226	3.5409	3.4228	3.5240	3.1959	3.1323	3.1164	3.5176
de potassium	0.2424	0.2438	0.2266	0.3041	0.2263	0.2183	0.2277	0.2171
de lithium	0.0190	0.0227	0.0153	0.0227	0.0185	0.0206	0.0177	0.0185
de calcium	0.2529	0.2573	0.4128	0.3781	0.4904	0.4849	0.5015	0.4169
de magnesium	0.0483	0.0470	0.0500	0.0522	0.0689	0.0715	0.0667	0.0624
Deferreux avec manganese	0.0028	0.0012	0.0045	0.0028	nondose	0.0006	0.0009	0.0089
Sulfate de sodium	0.2795	0.2757	0.2660	0.2667	0.2684	0.2689	0.2734	0.2638
Chlorure de sodium	0.5737	0.5751	0.5679	0.5675	0.5346	0.5163	0.5291	0.5693
Phosphate disodique	0.0028	traces	0.0007	traces	traces	traces	traces	traces
Arseniete disodique	0.0008	0.0008	0.0008	0.0012	nondose	0.0007	0.0007	0.0009
Silice	0.0652	0.0640	0.0503	0.0620	0.0416	0.0416	0.0395	0.0487
Acide borique, iode, strontium, rubidium	traces	traces	traces	traces	traces	traces	traces	traces
Matières organiques et pertes	0.0064	0.0083	0.0063	0.0015	0.0194	0.0066	traces	traces
Poids du résidu sec par litre	5.0164	5.0368	5.0240	5.1828	4.8640	4.7624	4.7736	5.1241
Minéralisation totale avec les bicarbonates anhydres, sans l' carbonique, ulze	6.7038	6.7325	6.7340	6.9490	6.5242	6.3952	6.4058	6.8849

THE SARATOGA VICHY SPRING COMPANY.

141 Exhibits N, O, P and Q (are specimens of the packages or bottles of dry salts evaporated from the Vichy water as sold by the Vichy Company).

EXHIBIT R—BULLETIN DES LOIS No. 613.

No. 15049.

Royal Ordinance Containing Regulations Having to Do with Mineral Waters.

At the Tuileries palace, June 18, 1823.

Louis, by the grace of God, King of France and Navarre, to all whom these presents come, Greeting:

Informed that the execution of the laws and regulations for the administration of mineral waters is neglected, that the requirements of the same are not well known despite there having been collected and put together; that there has not been a sufficient application of them in connection with artificial mineral waters;

Seen the declaration of April 25, 1772, the decrees of the council of the first of April 1774 and the 5th of May 1781 as well as article 11 of the law of August 24, 1790 and article 484 of the Penal Code which maintained in vigor these ancient regulations;

Seen governmental decrees of May 18, 1799 (29th Floreal year VII), 23rd April, 1800 (3rd Floreal year VIII), 27th December 1802, (6th Nivose year XI) and the law of April 11, 1803 (21 Germinal year XI);

Seen furthermore, so far as it affects the salaries of inspectors, the financial laws of August 17, 1822 and May 10th 1823. Considering that to take general precautions and to exact guarantees in
142 the interest of public health with respect to enterprises having for an end the manufacture or sale of certain medicinal preparations forms one of the most important branches of the police function; that experiences has not ceased to demonstrate the necessity of special regulations which shall have to do with mineral waters and the inconveniences inseparable from any negligence in the execution of the same; that this necessity is particularly demonstrated in the case of artificial mineral waters, not only in order to prevent dangers of their adulteration and improper use but the greater dangers may result from their preparations. For these reasons upon the recommendation of our minister secretary of state for the interior and counsel of state being heard we have ordained and do ordain what follows:

TITLE 1.—*General Requirements.*

Art. first. Every enterprise having for its purpose the sale or furnishing to the public of natural or artificial mineral waters is subject to a previous authorization and to the inspection of experts as will be regulated hereinafter.

The sale of said waters in the drug stores is alone excepted from these conditions.

Art. second. The authorization exacted by the preceding article will be continued to be given out by our minister secretary of state for the interior upon the recommendation of local authorities, accompanied in the case of natural mineral waters by the analysis of the same, and in the case of artificial mineral waters by the formulas used in their preparation.

These can only be revoked in case of resistance to the regulations prescribed by the present ordinance or in case of compromise of a nature to compromise the public health.

143 Art. third. The inspection ordered by article first above will continue to be entrusted to doctors of medicines or of surgery. They will be nominated by our minister secretary of state for the interior in such a way that there will never be more than one inspector to an establishment, and that one inspector will inspect several establishments when the work will permit. It will, nevertheless, be possible in the following case or whenever it is judged necessary to have the nomination made by adjutant inspectors for the purpose of replacing the ordinary inspectors in case of absence, sickness or other hindrance.

Art. fourth. The inspection has for its object everything which in each establishment has to do with the public health. The inspectors for this purpose must make whatever propositions and observations which they deem necessary to the proprietors, managers and lessees. They, if necessary, are to carry their complaints to the authorities and must state in detail the abuses which have come within their knowledge.

Art. fifth. They are to look out particularly for the preservation of the springs, their amelioration; that the artificial mineral waters shall always be in conformity with the approved formulæ, and that both kinds of waters shall be neither impositions or adulterations. When they find that they are such, they are to take or require necessary precautions to prevent their being sold to the public, and, if necessary, to institute such proceedings as are in accordance with law.

Art. sixth. They are to supervise within the establishment the distribution of the waters, the use made of them by the sick; without, however, putting any obstacle in the way of the freedom which these last should have to follow the prescriptions of

144 their own physicians or surgeons and even to be accompanied by the same if they ask it.

Art. seventh. The salaries of the inspectors being at the charge of the establishment inspected, the proprietors, managers or lessees will be necessarily heard upon the settling of them which will continue to be done by the prefects and confirmed by our minister secretary of state for the interior. There is no need of any salary for the adjutant inspectors.

Art. eighth. Wherever the rush of the public requires it, the prefects having heard the proprietors our inspectors will make special rules which shall have in view the preservation of the

interior disturbances, the healthiness of the waters, the free use, exclusive of any preference during the hours to be assigned for sick for baths and douches and the particular protection of these last in every establishment under the special supervision of the State authorities. When the establishment belongs to the State, a department or commune or a charitable institution the regulations will also have in view other branches of the administration.

Art. ninth. The regulations prescribed by the preceding article will be transmitted to our minister secretary of state for the interior who will make such modifications of them as he deems necessary. They will be posted in the establishments and will be obligatory on all persons who frequent them as well as upon those employed in duties therein. The inspectors may require the dismissal of those of the latter who refuse to conform therewith.

Art. tenth. There will also be posted in these establishments and in all others used in connection with the sale of mineral waters, the tariff ordered by article 10 of the governmental decree of
145 December 27, 1802. When the tariffs have to do with private enterprises the approval of the prefect will effect no modification of the prices and will merely serve to authenticate them.

Art. eleventh. Under no conditions will there be exacted or allowed prices higher than these tariffs. The inspectors also shall not exact anything from the sick, whose treatment they have not in charge or to whom they give no particular care. They will continue to take care, without charge, of all poor people admitted free of charge in the hospitals dependent upon the thermal establishment, and they are obliged to visit them at least once a day.

Art. twelfth. The various inspectors will fill and send each year to our minister of the interior certain tables, the slips of which will be furnished them. They will add thereto the observations that they have made and the notes they have taken upon the nature, composition and efficacy of the waters as well as upon the method of their application.

Title II.

Special Requirements for the Manufacturers of Artificial Mineral Waters and Depots for the Sale of these Waters and of Natural Mineral Waters.

Art. thirteenth. Every individual manufacturing artificial mineral waters can obtain or hold the authorization exacted by article first only on condition of submitting to the requirements which concern him in the present ordinance, of paying the cost of inspection, of proving that he has the necessary knowledge for such business or of presenting as a guarantee a chemist of legal standing.

Art. fourteenth. They are not to depart in their preparations from the formulas approved by our minister secretary of state for
146 the interior, copies of which will be in the hands of the inspectors charged with seeing that they are exactly followed. They will, nevertheless, in particular cases have the right to carry

out formulas upon a prescription written and signed by a doctor of medicine or surgery. These prescriptions will be kept to be shown to the inspector, if he requires it.

Art. fifteenth. The necessary authorization for all depots of natural or artificial mineral waters elsewhere than pharmacies, or in places where the waters are drawn or manufactured, will also be granted only on the express condition of submission to the present regulations and of undergoing the expense of inspection. It is, nevertheless, in no way inconsistent with the right that preceding regulations have given to every individual to have mineral waters brought to him for his own use and that of his own family.

Art. sixteenth. There can be no exportation made of natural mineral waters out of the commune where they are drawn except under the supervision of the inspector. All exportations must be accompanied by a certificate of origin, by whom delivered, stating the quantities exported, the date of export and the manner in which the receptacles or bottles were sealed at the very moment when the water was drawn from the springs. The export of artificial mineral waters will also be supervised by the inspector and accompanied by a certificate of origin delivered by him.

Art. seventeenth. After the arrival of the said waters at their places of destination other than pharmacies or the homes of individuals the necessary verification to make it certain that the required precautions have been observed and that the waters cannot be sold to the public must be made by the inspectors. The cases shall be opened only in their presence, and the merchants must keep
147 a record of the quantities received as well as the successive sales.

Art. eighteenth. Whenever an inspector has not been appointed for these establishments a natural or artificial mineral waters will be submitted to visits here under articles 29, 30 and 31 of the law of April 11, 1803 (21 Germinal year XI).

TITLE III.

Of the Administration of Springs Belonging to the State, to Communes, or to Charitable Establishment-.

Art. nineteenth. Mineral-water establishments which belong to departments, communes or charitable institutions will be administered for their own accounts. The proceeds shall not be mixed up with the other revenues and shall be specially liable for the ordinary and extraordinary expenses of the said establishments except for any surplus after these expenses have been satisfied. The budgets and accounts will be presented and closed separately in conformity with the rules prescribed by the three orders of public duties.

Art. twentieth. Those that belong to the State will continue to be administered by the prefects under the authority of our minister secretary of state for the interior who will close the budgets and accounts and will have printed every year for distribution to the

houses of legislature a general table and summary of receipts and expenses. There will be printed in addition to the said title a summary showing the appropriations from the State budget for the thermal establishment.

Art. twenty-first. The establishments the subject of this title
148 will be leased, only upon the request of local authorities and the owners, and only when our minister of the interior has authorized their lease.

Art. twenty-second. The conditions book, of which the duties exacted by article 10 are a necessary fact, must be approved by the prefects after the inspectors have been heard. The adjudications will be public and by auction. The clauses of the leases will stipulate invariably that a rescis-ion will be made at once by the council of the prefecture in case of the violation of the conditions book.

Art. twenty-third. The members supervising administrations and the inspectors cannot be the purchasers of the said leases or to be interested in them in any way.

Art. twenty-fourth. In case of a grant by way of lease the manager will be named by the prefect. If the establishment belongs to a commune or a charitable institution the nomination will be made only upon the recommendation of the mayor or the administrator. The employees and servants attached to the service of the mineral waters in the establishment the subject of this chapter will be appointed in the same manner. These last appointments will only take place with the recommendation of the inspector. If the establishments belongs to several communes the recommendations must be made by the mayor of the commune in which it is situated. The same form will be observed in fixing the salaries of the employees as in their dismissal.

Art. twenty-fifth. In repairs, construction reconstruction and other works proceedings will be in conformity with the rules prescribed by the branch of the public service to which the establish-
149 ment belongs and to our ordinances of August 8th, October 31st, 1821, and May 22, 1822. In any case those works which are not required by the inspector must be ordered only after having taken his advice.

Art. twenty-sixth. Our minister secretary of state in the department of the interior is charged with the execution of the present ordinance.

Done in the Tuileries palace, June 18, 1823, in the 29th year of our reign.

(Signed) LOUIS,
By the King.

The minister secretary of state in the department of the interior.

(Signed) CORBIERE.

150 EXHIBIT S—BULLETIN DES LOIS NO. 413, PAGE 257.

No. 3827.

Law Concerning the Preservation and Management of Mineral-water Springs of July 14, 1856.

Napoleon, by the grace of God and the will of the nation, Emperor of the French, to all present and to come, Greeting:

We have sanctioned and sanction, have promulgated and promulgate the following:

Law.

Extract from the Report of Congress.

Congress has adopted the bill of which the following is the tenor:

Title 1. Concerning declarations that springs are of public interest and the servitude and rights which result therefrom.

Article 1. Mineral-water springs may be declared of public interest, after investigation, by imperial decree resolved upon in the council of State.

2. A perimeter of protection may be assigned to a spring declared to be of public interest by a decree made in the manner stated in the preceding article. This perimeter may be modified if new circumstances make it necessary.

3. No sounding or work under ground can be done within the perimeter or protection of a mineral spring declared to be of public interest without proper authorization.

151 With regard to ditches, trenches for the purpose of taking out materials or for any other object the excavations for the foundation of houses, cellars or other works in the open air, the decree which fixes the perimeter of protection may impose upon the owners the duty of making, at least a month in advance, a declaration to the prefect who will give up a receipt for it.

4. The works enumerated in the preceding article and undertaken whether by virtue of a regular authorization or after a proper declaration may, upon the demand of the owner of the spring, be forbidden by the prefect if their resolve is found to be the alteration or diminution of the spring. The owner of the land has a right to be heard in this connection. The decree of the prefect is provisionally of force, recourse to the counsel of the prefecture and to the counsel of the State by way of objection being reserved.

5. When by reason of soundings or underground works undertaken outside of the perimeter of protection and judged to be of a nature to alter or diminish a mineral spring declared to be of public interest, the extension of the perimeter seems necessary, the prefect may, upon the demand of the owner of the spring, order provisionally the suspension of the work. The work may be taken up again if, after a delay of six months, no law has been passed extending the perimeter.

6. The rules stated in the preceding article are applied to mineral springs declared to be of public interest to which no perimeter has been assigned.

7. Within the perimeter of protection the proprietor of a spring declared to be of public interest has the right to do within the land of any other person with the exception of inhabited houses and the court-yards adjoining them, all the work of taking up and
152 making proper accommodations necessary for the preservation, conduct and distribution of the spring, when these works have been authorized by a decree of the minister of agriculture, commerce and public works. The owner of the land is heard in this connection also.

8. The owner of a mineral spring declared to be of public interest may carry out upon his own land all the works of taking up and proper accommodations necessary for the preservation, conduct and distribution of the spring one month after making known his intention to the prefect. In case of opposition by the prefect a proprietor can commence or go on with the work only after the authorization of the minister of agriculture, commerce and public works. In default of a decision within three months the proprietor may go on with the works.

9. The occupation of land included within the perimeter of protection for the execution of the works specified in article 7 can only take place by virtue of a decree of the prefect which fixes the duration of the same. When the occupation of a piece of land included within the perimeter deprives the owner of the enjoyment of the revenue for more than one year, or when after the work is done the land is no longer fit for the use to which it was formerly put, the owner of the said land may exact from the owner of the spring the value of the land occupied or injured. In this case the indemnity is regulated according to the form prescribed by the law of May 3, 1841. In no case can the dispossession be instigated by the owner of the spring.

10. The damages due by reason of the suspension, prevention or destruction of works in the cases enumerated in articles 4, 5, and 6 as well as those due by reason of the work executed by virtue of articles 7 and 9 are charged to the owner of the spring. The
153 indemnity is regulated by amicable settlement or by the courts. In the cases specified in articles 4, 5 and 6 the indemnity due from the owner of the spring cannot exceed the amount of the material lost that the owner of the land has suffered, and the cost of the works that have become useless added to the sum necessary for the restoration of the place to its original condition.

11. Decisions concerning the execution or destruction of works upon the land of another can only be executed after the deposit of security the amount of which is fixed by the court and which serves as a guarantee for the payment of the indemnity in the cases enumerated in the preceding article. The State is excused from giving security for the springs of which it is the owner.

12. If a mineral-water spring declared to be of public interest is

exploited in a manner which is injurious to its preservation, or if the exploitation is not in accord with the requisitions of the public health an imperial decree resolved upon in the council of State may authorize the dispossession of the spring and the necessary dependencies thereof according to the forms prescribed by the law of May 3, 1841.

Title 2. (Merely states the penalties consequent upon the violation of the preceding articles.)

Title 3. General and temporary regulations.

18. The amount necessary to cover the expense of medical inspection and supervision of authorized mineral-water establishments is levied upon these establishments. The amount is determined every year by the finance law. The apportionment of it is made among the different establishments *pro ratia* of their revenue. The collection is made as a matter of direct levy upon the owners, administrators or lessees of the establishment.

154 19. Rules of public administration determine: the forms and conditions of the declaration of public interest, of the fixing of the perimeter of protection, of the authorization mentioned in article 3rd and the statement mentioned in article 4th. The organization of the medical inspection and supervision of the spring and establishments of natural mineral waters, the levies and the mode of apportioning them stated in article 18; the general provisions for order, police regulations and health regulations which all natural mineral-water establishments must satisfy.

20. Article 9 of the consular decree of the 6th Nivose year XI is abrogated as well as all rules laid down by former laws, decrees, ordinances and regulations which are contrary to the rules laid down by the present law.

21. The decree of March 8, 1848, will continue to be effective till January 1, 1857, for all establishments which have not been declared of public interest before this date.

Resolved at public session at Paris, May 22, 1856.

The president (signed) Comte de Morny, the secretaries (signed) Comte Joachin Murat, Marquis of Chaumont-Quitry, Tesnere, Ed. Dalloz.

Extract from the Report of the Senate.

The senate is not opposed to the promulgation of the law having for its object the preservation and management of the mineral-water springs.

Resolved at a session in the senate house, July 5, 1856.

The president (signed) Troplong, the secretaries (signed) De Goulhot de Saint-Germain, Le Comte le Marois, Baron T. de Lacrosse.

Seen and sealed with the senate seal.

(Signed) BARON T. LACROSSE.

155 We command and order that the accompanying, sealed with the seal of State and published in the *Bulletin des Lois*, be addressed to courts, tribunals and administrative authorities that they may be entered upon their registers, observed and made

to be observed, and our minister secretary of state in the department of justice is charged with the supervision of the publication thereof.

Done at Plombieres, July 14, 1856.

(Signed) NAPOLEON,
By the Emperor.

The minister of state.
(Signed) ACHILLE FOULD.

Seen and sealed with the great seal, the keeper of seals the minister secretary of state in the department of justice.

ABBATUCCI.

EXHIBIT T—BULLETIN DES LOIS No. 428, PAGE 20.

No. 4017.

Imperial Decree Regulating the Preservation and Management of Mineral-water Springs (of September 8, 1856).

Napoleon, by the grace of God and the will of the nation, Emperor of the French, to all present and to come, Greeting:

Upon the report of our minister secretary of state in the department of agriculture, commerce and public works, seen the law of July 14, 1856, having to do with the preservation and management of mineral-water springs and especially paragraph 1st of article 19 of the law, the said paragraph reading thus:

"Rules of public administration determining the forms
156 and conditions of the declaration of public interest, of the fixing of the perimeter of protection, of the authorization mentioned in article 3, and of the statement mentioned in article 4."

Our counsel of state being heard, we have decreed and decree the following:

TITLE 1ST.

Concerning the Declaration of Public Interest.

Article 1. The petition having in view the declaration of a mineral-water spring to be of public interest is addressed to the prefect of the department. This petition is made in duplicate, one copy being upon stamped paper. It gives the surnames, the Christian name and the domicile of the petitioner. The petition sets forth the amount of daily yield from the springs with the variations to which it is subject in the various seasons, the composition and special properties of the water, the consistence of the establishment of mineral waters which it supplies and the number of sick that this establishment has received during the three years preceding. To this petition is annexed a plan in triplicate on a scale of 10 millimeters to the meter, representing the mineral-water establishment and showing the arrangement of the reservoirs, bath-rooms, douches and all apparatus and construction having to do with the management and

administration of the waters. The petitioner adds thereto all the vouchers necessary to make evident the services that the establishment renders to the public health.

3. The prefect has the petition registered upon a special register and orders publications and notices of it within ten days.

4. By direction of the prefect the petition is published and posted in the commune in which the mineral-water establishment is situate and in the chief arrondes-ement towns of the department. It
157 is printed in one of the papers of each of the arrondes-ement in which the publications and notices are made, the whole at the expense of the petitioner. The posting must be for one month dating from the day they are put up in each place. In each place the publication is made before the door of the town hall and the parish and consistory churches after the services are over on Sunday and at least once during the duration of the notices.

5. The register for the purpose of receiving public observations and remarks is open during the same length of time at the town hall in which the establishment is situated as well as in the chief arrondes-ement town of the department.

Art. 6. Thus at the expiration of the time before set and in the following month a commission composed, under the prefect as chairman, of two members of the general council of the mining engineer and inspecting physician meets at the prefecture to give its advice upon the result of the investigation and the petition for a declaration of public interest. Upon due resolution of the commission the prefect has the daily flow of the spring verified by the mining engineer and furthermore has an analysis of the waters made by him. The necessary outlays for these operations are at the expense of the petitioner. The prefect transmits without delay to the minister of agriculture, commerce and public works the deliberation of the commission and at the same time all the details of the investigation.

7. The consulting committee of public health and the general council of mines are called upon to give their opinion, and by a decree resolved in the council of state action is taken upon the petition for declaration of public interest.

8. The decree containing the declaration of public interest is published and posted at the expense of the petitioner in the com-
158 mune in which the establishment of the mineral water is situate and in the chief cantontown of the arrondesement.

9. When different springs are exploited in one establishment the petitioner for declaration of public interest may embrace all or several of them, and the investigation is made at once for all the springs comprised in the petition. However, the requirements indicated in paragraph 1st in article 2 must be separate for each spring as well as the verifications and proofs mentioned in paragraph 2 of article 6.

TITLE 2.

Concerning the Fixing of the Perimeter of Protection.

10. The petition for the fixing of a perimeter of protection about a spring declared to be of public interest is formed and carried out according to the rules set forth in the preceding title with the exception of the modifications which follow.

11. The petition is accompanied first by a statement setting forth the reasons at length; second, by a plan on the scale of one millimeter to the meter representing the lands to be included within the perimeter and upon which also is indicated the supposed basin of the spring and its point of immergence. The petition is published and posted and the records of the investigations concerning it are open to the public in each of the communes upon the land included within the perimeter asked for.

12. The petition for the fixing of a perimeter of protection may be introduced at the same time as the petition for declaration of public interest and both may be legalized after one and the same examination.

13. Petitions for the modification of a perimeter are drawn up and presented as the petitions for a first fixing of the perimeter and are legalized in the same manner.

159 TITLE 3RD.

(*Prescribes the Steps to be Taken in Obtaining Authority to Carry on Work within the Perimeter of Protection.*)

19. Our minister of agriculture, commerce and public works is charged with the execution of the present decree which shall be printed in the *Bulletin des Lois*.

Done at Biarritz, September 8, 1856.

(Signed) NAPOLEON,
By the Emperor.

The minister of agriculture, commerce and public works.

(Signed) E. ROUHER.

EXHIBIT U—BULLETIN DES LOIS NO. 772, PAGE 137.

No. 7331.

Imperial Decree Containing Regulations for the Public Administration of the Natural Mineral-water Establishments (of the 28th of January, 1860).

Napoleon, by the grace of God and the will of the nation, Emperor of the French, to all present and to come, Greeting:

Upon the report of our minister secretary of state in the department of agriculture, commerce and public works, seen articles 18

and 19 of the law of July 14, 1856, concerning mineral waters which said articles read as follows:

"Article 18. The amount necessary to cover the expense of
160 medical inspection and supervision of the authorized establishments of mineral waters is levied upon these establishments. The amount thereof is determined each year by the law of finance. The apportionment thereof is made among the various establishments *pro rata* to their revenue. The collection is made as a matter of direct levy upon the owners, administrators or lessees of the establishment."

Article 19. Regulations of public administration determining the forms and conditions of the declaration of public interest, the fixing of the perimeter of protection, the authorization mentioned in article 3rd and the statement mentioned in article 4th. The organization of the medical inspection and supervision of the springs and establishments of natural mineral waters, the levies and the mode of apportioning the same set forth in article 18. The general rules of order, police regulations and health regulations to which all establishments of natural mineral waters must conform. Our counsel of state being heard we have decreed and decree the following:

TITLE 1ST.

Arrangements for the medical inspection and supervision of the springs and natural mineral-water establishments. (This title prescribes the number of physicians, the number of inspections and the duties of inspecting physicians.)

Title 2. (This title states by whom regulations shall be made for the proper use of the waters, preservation of order, separation of the sexes, the proper protection of the sick, &c., &c.)

Title 3. (Sets forth in detail the method of providing for the payment of the expense of medical inspection, &c., by the institutions or establishments inspected.)

161 Title 4. (States that the law of June 18, 1823, is to continue in full force except where contrary to the present law.)

Done at the Tuileries, January 28, 1860.

(Signed) NAPOLEON,
By the Emperor.

The minister of agriculture, commerce and public works.

(Signed) E. ROUHER.

EXHIBIT V—BULLETIN DES LOIS NO. 1172, PAGE, 923.

No. 19379.

Decree modifying article 6 of the decree of September 8, 1856, having to do with the preservation and management of mineral-water springs (of the 11th of April, 1888), promulgated in the official journal of April 15, 1888.

The president of the French Republic, upon the report of the minister of commerce and industry, seen the law of July 14, 1856, hav-

ing to do with the preservation and management of mineral-water springs; seen the decree of September 8, 1856, containing rules for the public administration for the purpose of executing the law recited, and particularly in article 6, paragraph 2, which reads as follows:

Article 6, paragraph 2. Upon due resolution of the commission, the prefect has the mining engineer verify the daily output of the spring. He also has him analyze the waters. Seen the decree of the chief of the executive power of date August 30, 1871, the counsel of state being heard, it is decreed:

162 (This decree merely states that the prefect may have the analysis of the waters proceeded with upon the resolution of the commission and the verification of the output of the spring made by the mining engineer. Also that this decree shall be published in the official journal and in the *Bulletin des Lois*.)

Done at Paris April 11, 1888.

(Signed) CARNOT.

The minister of commerce and industry.

(Signed) PIERRE LEGRAND.

EXHIBIT W—BULLETIN DES LOIS NO. 756, PAGE 47.

No. 12906.

Law modifying article 18 of the law of July 14, 1856, having to do with the establishments of natural mineral waters (of February 12, 1883), promulgated in the official journal of February 13, 1883.

The senate and the chamber of deputies have adopted and the president of the Republic promulgates the law of which the following is the tenor:

Article 1. The employment of an inspecting physician of the natural mineral-water establishments gives no right to any recovery on the part of the State or on the part of the owners of these establishments.

2. All legislative dispositions contrary to the present law are abrogated, and especially article 18, title 3 of the law of July 14, 1856, and articles 22 to 33 inclusive of the decree of January 28, 1860, made for the execution of the State law. The present law resolved upon and adopted by the senate and the chamber

163 of deputies will be executed as a law of the State.

Done at Paris, February 12, 1883.

(Signed) JULES GREVY.

The minister of commerce.

(Signed) PIERRE LEGRAND.

The minister of finance.

(Signed) P. TIBARD.

Exhibit X (is a plan showing the situation of the springs at Vichy owned by the State.)

Composition of the Waters of the State at Vichy.

Names of the springs.	Grande Grille.	Puits carre or Chomel.	Lucas.	Hopital.	Groupe of the Celestins.			Parc.
					Celestins Grotto.	Anciens Celestins.	Neo Celestins.	
I.—Temperature.	41°.8	44°.0	28°.4	34°.0	14°.0	13°.8	16°.4	16°.3
II.—Composition :	*Gr.*	*Gr.*	*Gr.*	*Gr.*	*Gr.*	*Gr.*	*Gr.*	*Gr.*
Acide carbonique des bicarbonates	3.3748	3.3914	3.4200	3.5324	3.3205	3.2656	3.2645	3.5197
Acide carbonique libre {	0.8494	0.9729	1.6798	1.1770	0.6199	1.6419	1.7765	1.6936
{	(430 c. c.)	(492 c. c.)	(550 c. c.)	(535 c. c.)	(314 c. c.)	(830 c. c.)	(898 c. c.)	(857 c. c.)
	Gr.	*Gr.*	*Gr.*	*Gr.*	*Gr.*	*Gr.*	*Gr.*	*Gr.*
Carbonate neutre de sodium	3.5226	3.5409	3.4228	3.5240	3.1959	3.1223	3.1164	3.5176
" " " potassium	0.2424	0.2438	0.2266	0.3041	0.2263	0.2183	0.2277	0.2171
" " " lithium	0.0190	0.0227	0.0153	0.0227	0.0185	0.0206	0.0177	0.0185
" " " calcium	0.2529	0.2573	0.4128	0.7381	0.4904	0.4849	0.5015	0.4169
" " " magnesium	0.0483	0.0470	0.0500	0.0522	0.0689	0.0715	0.0667	0.0624
" " de ferreux (avec manganese)	0.0028	0.0012	0.0045	0.0028	nondose	0.0006	0.0009	0.0089
Sulfate de sodium	0.2795	0.2757	0.2660	0.2667	0.2684	0.2689	0.2734	0.2638
Chlorure de sodium	0.5737	0 5751	0.5679	0.5675	0.5346	0.5163	0.5291	0.5693
Phosphate disodique	0.0028	traces	0.0007	traces	traces	traces	traces	traces
Arseniate disodique	0.0008	0.0008	0.0008	0.0012	nondose	0.00075	0.00075	0.0009
Silice	0.0652	0.0640	0.0503	0.0620	0.0416	0.0416	0.0395	0.0487
Acide borique, iode, strontium, rubidium	traces	traces	traces	traces	traces	traces	traces	traces
Matieres organiques et pertes	0.0064	0.0083	0.0063	0.0015	0.0194	0.00665	"	"
Weight of the dry residuum per litre	5.0164	5.0368	5.0240	5.1828	4.8640	4.7624	4.77365	5.1241

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THE SARATOGA VICHY SPRING COMPANY. 203

165 EXHIBIT Z—BULLETIN DES LOIS No. 982, PAGE 634.

No. 9046.

Imperial decree (countersigned by the minister of agriculture, commerce and public works) which declares to be of public interest the mineral-water springs de la Grande Grille, du Pruits carré, de Lucas, du Parc, de l'Hopital, des anciens Celestins, des Nouveaux Celestins, des Dames, d'Hauterive, belonging to the State and situ ate in the communes of Vichy, Cusset and Hauterive (Allier).

Paris, January 23, 1861.

EXHIBIT A A—BULLETIN DES LOIS No. 224, PAGE 334.

No. 3420.

Decree of the President of the French Republic (Countersigned by the Minister of Agriculture and Commerce) to this Effect:

Article 1. The two mineral springs "Nouvelles Sources des Celestins No. 2" (in the middle of the Grotto), acquired in 1870, and the Sources des "Anciens Celestins No. 2," discovered in 1870, the said springs being dependencies of the thermal establishments of Vichy, and belonging to the State and declared to be of public interest.

Article 2. The perimeter of protection is established about the group of springs of Vichy, the spring of "Mesdames" and the spring of "d'Hauterive," belonging to the State. The perimeter established about the springs of Vichy properly so called, that
166 is to say, the spring of du Puits carré, de la Grande Grille, de Lucas, du Parc, de l'Hopital, Anciens Celestins No. 1, Anciens Celestins No. 2, Nouvelle source des Celestins No. 1 (source de la Vasque) nouvelle source des Celestins No. 2, all belonging to the State, is formed as follows:

(The rest of the decree states in detail the directions, length, &c., of the lands forming the perimeter of the springs mentioned, and states that paragraph second of article 3rd of the law of July 14, 1856, applies to lands within the perimeter of the Vichy springs, properly so called, except one certain small portion.,

Versailles, May 17, 1874.

EXHIBIT B B—BULLETIN DES LOIS No. 1732, PAGE 1016.

No. 30098.

Decree of the President of the French Republic (Countersigned by the Minister of the Interior) to this Effect:

Article 1. (This article merely changes slightly the direction, length, &c., of the lands forming the perimeter of protection of the Vichy springs.)

Article 2. (Limits the application of paragraphs 2 of article 3 of

the law of July 14, 1856, to the land as mentioned in article 4 of the decree of May 17, 1874.)

Article 3. (Regulates the placing of boundary marks.)

Article 4. (The publication of the decree.)

(Havre August 8, 1895.)

167 EXHIBIT C C.

Minister of public works, department of roads, navigation and mines, division of mines.

First Borough Allier, French mineral springs.

Trial pending before the American courts.

FRENCH REPUBLIC, PARIS, *February* 15, 1896.

The inspector general:

The president of the council, minister of the interior, has communicated to me a letter in which the director of the Compagnie Fermiere de l'Establissement Thermal de Vichy has acquainted him with a desire expressed by the circuit court of New York that some high official of the department of mines should be designated to answer before the embassador of the United States of certain number of questions relative to the law governing mineral waters having in view the solution of a trial pending before the American courts between the Compagnie Fermiere and the State on one hand and a counterfeiter of the vichy waters on the other.

I have the honor to inform you that I have designated you to fulfill this mission in view of which I beg you to put yourself at the disposition of the president of the council. I furthermore send you herewith the interrogatories propounded on behalf of the Vichy Company. Accept, inspector general, the assurances of my most profound consideration.

The minister of public works,

ED. GUYOT-DESSAIGNE.

168 Exhibit D D (is a map of Vichy.)

Exhibit E E (is a copy of Exhibit A, in every respect the same as Exhibit A.)

Exhibits F F, G G, H H and I I (are copies of labels used upon the mineral water of four of the Vichy springs, the Grande Grille, the Hospital Celestins and the Parc.)

Exhibit J J.

(*Willin's Analysis Lardy Spring.*)

	Gr.
Carbonic acid in the bicarbonates	3.6325
free	1.5515
Neutral carbonate of sodium	3.5902
" " potassium	0.2300
" " lithium	0.0185
" " calcium	0.4698
" " magnesium	0.0560
" " "ferreuse"	0.0152
Sulphate of sodium	0.2675
Chloride of sodium	0.5922
Phosphate "disodique"	0.0012
Arseniate "disodique"	0.0007
Silica	0.0326
Boric acid, iodine, strontium, rubidium	traces
Organic matter and loss	0.0041
Weight per litre of the dry residue	5.2780

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Exhibit K K.

(*Analysis Larbaud Spring.*)

	Gr.
Free carbonic acid	1.320
Bicarbonate of soda	4.880
" potash	0.220
" lime	0.238
" magnesia	0.130
" lithine	sensible
" protoxide of iron	0.023
" magnesia	traces
Sulphate of soda, chalk	0.100
Chloride of sodium, " calcium	0.300
Azotate	indications
Iodure bromide	sensible
Arseniate	do.
Phosphate	do.
Organic matters	
Silica, Silicate	0.060
	7 gr. 271

Exhibit L L.

(Analysis Dubois Spring.)

Free carbonic acid	1.303
Bicarbonate of soda	4.507
" potash	0.119
" magnesia	0.109
" lime	0.373
Protoxide of iron	0.063
Sulphate of soda	0.124
Arseniate of soda	0.002
Chloride of sodium	0.125
Bicarbonate of lithium	0.018
Chloride of calcium & of rubidium	sensible
Alumin	0.015
Silica	0.034

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Exhibit M M.

Table 1.

Comparison of the chemical constituents found in siphons of the Carl H. Schultz vichy, by Ed. Bonjean, with the figures indicated on the labels of the siphon as the results of the analyses of Bauer, and with the natural mineral water of the spring Grande Grille according to the analyses of M. Willon (all the results are given in milligrammes and refer to a litre).

	Bauer.	Bonjean.	G. Grille.
Sulfate de potassium $K_2 So_4$	204.40		
" sodium $Na_2 So_4$	117.71	311.7	279.5
Acide sulfurique combine	160.3	175.6	157.3
Phosphate de sodium	4.22		2.8
Chlorure de sodium	578.78	599.8	573.7
Bromure de sodium	0.13		
Iodure de sodium	0.03		
Carbonate de soude $Co_3 Na_2$	3801.30	4028.0	3522.0
" d'ammoniaque	4 69		
" de calcium $Co_3 Ca$	250.03	224.0	252.9
" de strontium $Co_3 St$	2.32		traces
" de magnesium $Co_3 Mg$	35.29		48.3
Iron et manganese	traces		traces
Alumine $Al_2 O_3$	0.78	224.0	traces
Acide silicique	64.06		65.2
Arseniate de sodium			0.8
Carbonate de potassium			242.4
" de lithium			19.0
Carbonate ferreux			2.8
Acide borique, iode strontium, rubidium			traces
Poids du residu sec	5063.74	5071.2	5016.4
Acide carbonique des bicarbonates			3374.8
Acide carbonique litre			849.4

171 EXHIBIT O O.

The mineral waters of the springs of Vichy, analyzed by various experts and very probably under different conditions of analysis, have given the following results, which are, as may be seen, very similar:

	Grande Grille.	Puits Chomel.	Lucas spring.	Hopital spring.	Anciens Celestins.	Parc spring.	Lardy spring.
Weight per litre of dry residue according to Willin, 1881...	5.0164	5.0368	5.0240	5.1828	4.7624	5.1241	5.2780
Weight of residue according to Bouquet, 1854.....	5.2080	5.2480	5.2440	5.2640	4.8080	5.2800	5.4560

The difference between the figures of Bouquet and of Willin should very probably be attributed to the fact that the residues of the water in the experiments of Bouquet were less dry than those of Willin.

Taking this into account it may be said that the residue in a litre of the mineral waters of the Vichy springs belonging to the State has not varied.

Paris, Feb. 27, 1897.

(Signed) ED. BONJEAN.

172 United States Circuit Court, Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE d'Etablissement Thermal de Vichy, Complainants,
vs.
LOUISA SCHULTZ, Executrix, Defendant.

Stipulation.

It is agreed by counsel that the paper produced herewith marked "Endemann Report," and bearing the signature of the examiner, is a true copy of the report referred to by the witness Herman Endemann in his deposition (82 X Q. *et seq.*), and that the same may be read and used in evidence as if it had been attached to and made a part of the deposition of the witness Endemann.

It is further agreed that the said copy shall be retained by complainants' counsel as one of complainants' exhibits.

ROWLAND COX,
Counsel for Complainants.
BRIESEN & KNAUTH,
Counsel for Defendant.

173 ENDEMANN REPORT, COMPLAINANTS' EXHIBIT, APRIL 30, 1898. F. M. Adams, Ex'r.

(From the N. Y. Tribune, March 29, 1889.)

Natural and artificial vichy.

The action of the board of health in regard to the use of impure waters from city wells in the manufacture of mineral waters, as recently reported in *The Tribune*, has started numerous inquiries as to the quality of the medicinal spring waters such as seltzer and vichy, sold by manufacturers, in this city. In order to test the question, vichy waters were purchased from twelve different manufacturers and submitted for analysis to a chemist of high standing, who reported as follows:

George Fred. Haynes, Esq.

DEAR SIR. I have examined the samples of vichy left at my laboratory for analysis. Vichy is a medicinal alkaline water and is composed of fifteen different mineral ingredients, the sum total of which is about 100 times greater than that of croton water. It is therefore of the utmost importance, that in artificial vichy the different ingredients should be present in correct proportion, as its efficacy and value depend upon it. A margin of 10 per cent. either way in artificial vichy as compared with natural vichy should certainly be more than ample for a medicinal preparation. The results are given in the following table:

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Analysis of natural and artificial vichy compared.	Carbonate of soda.	Chloride of sodium.	Total solids.
Natural vichy according to Bauer	380.1	57.8	506.5
1. Carl H. Schultz	380.2	57.6	508.2
2. Dr. Hanbury Smith	262.3	59.3	386.0
3. John Morgan	226.5	103.5	370.0
4. S. A. Ludin	190.8	61.0	227.5
5. Byrne Brothers	148.4	44.2	193.5
6. Hygeia Distilled W. C.	112.6	126.9	264.2
7. J. F. Meyer	74.2	213.7	343.0
8. Lighte & Bro.	66.2	73.5	141.0
9. Weymann Bros.	53.0	201.2	430.5
10. Rayner & Steele	66.2	137.0	224.0
11. Rolen & Byrne	53.0	3.3	66.0
12. Edward H. Warker	none	trace	8.5

From this table it will be seen that but one water, No. 1 (Carl H. Schultz) agrees well with the natural vichy.

Respectfully yours, DR. H. ENDEMANN.

New York, March 28, 1889.

This report will surprise the public, as it discloses the fact that only one water is manufactured in this city which closely approaches in composition the natural vichy, while all of them are sold as vichy, even in drug stores upon the prescription of physicians. Considering the large quantity of these waters used by the public, it is to be hoped that the medical profession will take the matter in hand and have the manufacture of mineral waters placed under official control.

175 United States Circuit Court, Southern District of New York.

LA REPUBLIQUE FRANCAISE ET AL., Complainants,
vs.
LOUISA SCHULTZ, Executrix, Defendant.

It is hereby agreed by counsel that the pamphlet or publication hereto annexed and marked "Complainants' Exhibit Schultz Publication" is a copy of a pamphlet or publication published and distributed by the former defendant, Carl H. Schultz, deceased, in or about the year 1891.

ROWLAND COX,
Solicitor and Counsel for Complainants.
BRIESEN & KNAUTH,
Solicitors and Counsel for Defendant.

176 COMPLAINANTS' EXHIBIT "SCHULTZ PUBLICATION."

Carl H. Schultz's

(C. P. M. S.)

Mineral spring waters.

Their chemical composition, physiological action, therapeutic and general use.

New York:
430–440 First avenue,
Between 25th & 26th streets.
1891.

Entered according to act of Congress, in the year 1891, by Carl H. Schultz, in the office of the Librarian of Congress, at Washington.

Prepared from pure distilled water.

Carl H. Schultz's

Mineral spring waters

Were introduced in 1862, and submitted to the leading chemical authorities in the United States for analysis. The late *Dr. John Torrey*, at that time professor of chemistry of the College of Physicians and Surgeons, and chief assayer of the U. S. assay office; *Dr.*

Wolcott Gibbs, professor of chemistry at Cambridge; *Dr. B. Silliman*, professor of general and applied chemistry in Yale college, New Haven; *Dr. Charles A. Joy*, professor of chemistry in Columbia college, examined and indorsed them as *absolutely pure and reliable, and in composition and effects as conforming to the natural springs.*

177 Lithia water and vichy with lithia were added to the list in 1864, and received by the medical profession with so much favor that quite a number of so-called Lithia springs have been brought to public notice, which, however, like most springs, contain only traces of lithia.

In 1867 a pavilion was erected in the Central park for the sale of my mineral waters, and physicians send their patients thither to add to the effects of the waters the benefit of the air and exercise.

The waters prepared by me conform to the analyses published in this pamphlet. They are charged with an excess of pure carbonic-acid gas, which increases their stimulating properties and imparts to them an agreeable, pungent taste.

Carbonic-acid water, commonly called carbonic.

Carbonic-acid water is *pure water impregnated with an excess of pure carbonic-acid gas.* It has a pleasing, cooling and pungent effect upon the palate, and produces an exhilarating effect upon the system; it accelerates the pulse, renders the head clear and the mind cheerful. It stimulates the gustatory nerves, the flow of saliva and the secretion of gastric juice, and is easily borne by persons with whom common water produces heaviness in the stomach and dyspepsia.

It is preferred in all cases in which the introduction of mineral ingredients into the system is not intended or desirable. It greatly promotes digestion, and should be used at and after meals; with the addition of a little wine or brandy it is beyond question the very best of effervescent table waters.

It checks acid fermentation in the stomach, cures nausea, and is the most natural and effective anæsthetic known to over-
178 come a chronic disposition to vomit. It promotes the peristaltic motions of the stomach and intestines. It is a much-esteemed remedy *in acute febrile diseases*, and is ardently desired by patients on account of its thirst-allaying and cooling power which is perceptible at once in the mouth and stomach.

Carbonic-acid water is the chief remedy in *chronic catarrhs*, not only of the stomach, intestines, kidneys and bladder, but also of the air passages. It hides the nauseous taste of many medicines, and is an excellent vehicle for their administration. Mixed with syrups it is extensively used as a summer beverage under the name of soda, and is often taken with wines and brandies, to which it imparts a champagne-like taste, and at the same time reduces their intoxicating properties.

If kept on draught in metal fountains—as is generally the case—it soon shows metallic contaminations and gradually acquires poison-

ous properties. It should, therefore, like all other mineral waters, be kept only in glass fountains.

Alkaline waters.

Representative: Vichy (Grande Grille).

Analysis by Bauer.

	Parts in 100,000.	Grains in U. S. gallon.
Potassium sulphate	20.404	11.8990
Sodium sulphate	11.771	6.8645
Sodium phosphate	0.422	0.2460
Sodium chloride	57.878	33.7531
Sodium bromide	0.013	0.0076
Sodium iodide	0.003	0.0015
Sodium carbonate	380.130	221.6842
Ammonium carbonate	0.469	0.2735
Calcium carbonate	25.003	14.5813
Strontium carbonate	0.232	0.1352
Magnesium carbonate	3.529	2.0580
Iron and manganese	traces	traces
Alumina	0.078	0.0455
Silica	6,406	3.7359
Total mineral ingredients	506.338	295.2853

One mineral-water glass (6 oz.) contains 13.85 grains of mineral ingredients.

179 Vichy water proves very useful in certain forms of *indigestion*—aversion to food, depression after meals, nausea, vomiting, flatulence, heartburn, constipation alternating with diarrhœa, etc.—*provided*, the symptoms arise from *excessive acidity* in, or chronic catarrh of the stomach, or from deficient innervation and secretion of gastric juice.

In *jaundice* caused by catarrh of the hepatic ducts, and *gallstones*, vichy proves often curative; but if there be a tendency to congestion and hæmorrhage, and great irritability of the nervous system, the carbonic acid may prove too exciting and its quantity should be reduced by warming the water. The ducts again become pervious, the mucus is fluidified, and after a week or a fortnight, gallstones are frequently discharged, and the pain ceases. The use of the water should be continued for some months, in order to prevent a recurrence of the disease. Waters containing a larger amount of sulphates and chlorides are often more efficacious.

Uric-acid diathesis is frequently *checked* by the use of vichy, and in cases of *renal calculi and gravel*, vichy water, by its diuretic action, greatly facilitates the *elimination* of these formations. It may also serve as a preventive of calculus in the bladder by fluidifying and removing mucus which might become the nucleus of a stone.

But its reputation as a solvent of *stone in the bladder* is without foundation. It simply relieves some of the unpleasant symptoms, and proves beneficial in certain cases of catarrh of the bladder dependent upon stricture of the urethra, or atony of the bladder, often observed in old persons.

In chronic catarrh of the air passages, after the inflammation has subsided and the disease become chronic, the muriated alkaline spas are usually preferred, and in abdominal plethora and congestion of the liver brought on by good living and want of exercise, the alkaline saline spas promise better results.

The *pastilles of vichy* are simply a mixture of bicarbonate of soda with sugar and gum, sometimes flavored.

Vichy water is often used as a refreshing drink, either plain or mixed with a little brandy, and is much admired by good livers, who are apt to suffer from acidity of the stomach.

Bilin (Josephquelle).

Analysis by Redtenbacher.

	Parts in 100,000.	Grains in U. S. gallon.
Sodium carbonate	300.8593	175.4551
Calcium carbonate	40.2213	23.4560
Magnesium carbonate	14.2968	8.3376
Lithium carbonate	1.4322	0.8353
Ferrous carbonate	1.0417	0.6075
Sodium sulphate	82.6822	48.2187
Potassium sulphate	12.8250	7.4793
Sodium chloride	38.2161	22.2868
Aluminum phosphate	0.8463	0.4936
Silica	3.1771	1.8528
Total mineral ingredients	495.5980	289.0227

One mineral-water glass (6 oz.) contains 13.55 grains of mineral ingredients.

Bilin is less alkaline than vichy, but its virtues are increased by the presence of carbonate of lithia and sulphate of soda. It is used in formations of solid concrements, in catarrhs, especially of the urinary organs, in hyperæmia of the liver and bilious affections, and after a course of Carlsbad in diabetes.

181 Obersalzbrunn (Silesia).

Analysis by Struve.

	Parts in 100,000.	Grains in U. S. gallon.
Potassium sulphate	5.4843	3.1983
Sodium sulphate	43.5872	25.4191
Sodium phosphate	0.0755	0.0440
Sodium chloride	15.3854	8.9724
Sodium bromide	0.0885	0.0516
Sodium carbonate	131.9649	76.9599
Ammonium carbonate	0.2096	0.1222
Lithium carbonate	0.1744	0.1017
Calcium carbonate	26.8476	15.6568
Strontium carbonate	0.3359	0.1959
Magnesium carbonate	26.9036	15.6896
Ferrous carbonate	0.6184	0.3606
Manganous carbonate	0.0455	0.0265
Alumina	0.0377	0.0220
Silica	4.2083	2.4542
Total mineral ingredients	255.9668	149.2748

One mineral-water glass (6 oz.) contains 7.00 grains of mineral ingredients.

This spring contains, contrary to its name, very little salt. It is a weak alkaline water with a sufficiently large proportion of sulphate of soda to render the latter effective. It is principally used by weak persons in catarrhal and pulmonary affections, mixed with whey or milk.

182 Muriated alkaline waters.

Representive: Selters.

Analysis by Struve.

	Parts in 100,000.	Grains in U. S. gallon.
Potassium sulphate	5.169	3.0144
Sodium phosphate	0.055	0.0320
Potassium chloride	4.162	2.7187
Sodium chloride	225.156	131.3064
Calcium fluoride	0.023	0.0134
Sodium carbonate	80.121	46.7250
Calcium carbonate	24.331	14.1893
Barium carbonate	0.025	0.0146
Lithium carbonate	traces	traces
Strontium carbonate	0.247	0.1440
Magnesium carbonate	26.042	15.1870
Alumina	0.017	0.0099
Silica	3.932	2.2930
Total mineral ingredients	369.780	215.6477

One mineral-water glass (6 oz.) contains 10.11 grains of mineral ingredients.

The physiological effects of selters and other muriated alkaline waters are characterized by carbonic acid, carbonate of soda and chloride of sodium, modified by other mineral ingredients and by the temperature of the water.

They have the most beneficial effect upon the human body. They lessen the acidity of the stomach, promote digestion and the elimination of used-up matter, and, without acting as strong aperients or diuretics, soon regulate the functions of the different organs, and restore tone and vigor to the whole system.

Selters is very effective in *chronic catarrh of the stomach* and in *bronchitis, if caused by cold,* when *the inflammatory irritation has subsided,* and *the affection becomes chronic;* it is often prescribed
183 in *hæmorrhoidal veins,* with inflammation of the mucous membrane and hæmorrhage, arising from pressure of stercoral matters and other causes of abdominal plethora, and with consequent affections of the nerves. But its use should be regularly continued, as the disease is apt to return. Carlsbad and Kissingen are sometimes preferred. If mixed with hot milk, selters is often used in affections where Ems is indicated.

The great success of sparkling selters as a table water has induced numerous manufacturers in Germany to put up artificial preparations which they sell as natural mineral waters. They are mostly ferruginous, indifferently mineralized waters from which the iron has been removed by exposure to air, which, if desirable, have been salted and which have been made sparkling by the use of soda-water machines, under great pressure. Having thus passed through a manufacturing process and being altered from their original composition, they have clearly ceased to be natural waters.

To this class belong: *Apollinaris, Bellthal, Birresborn, Genoveva Brunnen, Gerolstein, Hartzer Säuerline, Kronthal, Wilhelms-Quelle, Rhenser-Brunnen, Kaiser-Wasser* and others.

184 Ems (Kränchen).

Analysis by Fresenius, 1872.

	Parts in 100,000.	Grains in U. S. gallon.
Sodium chloride	97.720	56.988
Lithium chloride	0.290	0.169
Sodium sulphate	3.130	1.825
Sodium carbonate	140.528	81.954
Potassium sulphate	3.680	2.146
Calcium carbonate	15.013	8.753
Magnesium carbonate	13.584	7.922
Ferrous carbonate	0.145	0.085
Manganous carbonate	0.011	0.006
Strontium sulphate	0.210	0.128
Barium sulphate	0.100	0.058
Sodium iodide	0.002	0.001
Sodium bromide	0.034	0.019
Ammonium chloride	0.180	0.105
Sodium phosphate	0.165	0.096
Alumina	0.005	0.003
Silica	4,970	2.898
	279.777	163.156

One mineral-water glass (6 oz.) contains 7.65 grains of mineral ingredients.

In *prescribing Ems water, it is essential that the patient should be directed to drink it warm.* This is best effected by taking it with hot milk, or by heating it in a silver goblet or in a thin tumbler (surrounded by hot water), and adding sufficient of the cold spa to reduce it to the desired temperature. Used in this manner, the patient gets the benefit of the *warm* carbonic-acid gas; by warming the entire bulk of the water, the gas escapes and the water becomes flat.

Ems water is prescribed in *bronchitis*, if caused by cold, and if cough in the morning and evening is the most prominent symptom, or if connected with hæmorrhoidal complaints—after measles and whooping cough in children, and in adults who suffer from inflammatory irritation.

185 In *catarrh of the larynx*, often found in public speakers, clergymen, teachers, singers, etc., and due to an over-exertion of the voice, and in catarrhs where the follicles of the mucous membranes have assumed a granular appearance, these spas find great application, and are also used as a gargle.

In *tuberculosis of the lungs*, the reputation of Ems is *only* based upon the relief it affords it fluidifying the mucus, and facilitating a difficult and scanty expectoration, but if there are physical signs of tubercular infiltration, its use, as experience has fully shown, *should under no circumstances be advised, as hæmaptoe, febrile symptoms, and*

an aggravation of the disease altogether, would be the consequence. Neither can *emphysema* of the lungs be cured by this or any other spa; but Ems, by promoting expectoration, and improving abdominal circulation, greatly alleviates the most troublesome symptoms.

In *catarrh of the stomach* of a subacute nature, Ems should be used at first, and with concomitant symptoms of ulcer, enough carbonic-acid gas should be allowed to escape to prevent any ructus or flatus.

It is often used in *chronic catarrh of the intestines*, caused by disturbed circulation, and in which diarrhœa alternates with constipation; in certain forms of *catarrh of the hepatic ducts* with impeded excretion of bile and icterus; in *chronic catarrh of the bladder*, and in *gravel and renal calculi*. In these latter diseases it is often preferred to vichy, and its potency is explained by the theory that neither of them dissolves, but simply aids the elimination of solid concrements, and by curing the catarrh of those organs prevents new formations.

186 Gleichenberg (Constantinquelle).

Analysis by Gottlieb.

	Parts in 100,000.	Grains in U. S. gallon.
Sodium carbonate	251.1848	146.4860
Sodium chloride	185.1041	107.9494
Sodium sulphate	7.9427	4.6320
Lithium carbonate	0.4818	0.2810
Magnesium carbonate	47.8164	27.8861
Calcium carbonate	35.4284	20.6610
Potassium carbonate	5.5989	3.2652
Barium carbonate	0.0088	0.0052
Ferrous carbonate	0.3124	0.1823
Manganous carbonate	0.0518	0.0303
Sodium phosphate	0.1693	0.0987
Aluminium phosphate	0.0781	0.0455
Silica	6.3411	3.6980
Total mineral ingredients	540.5186	315.2207

One mineral-water glass (6 oz). contains 14.78 grains of mineral ingredients.

The Constantinquelle contains ⅓ more bicarbonate of soda, and twice as much chloride of sodium and carbonic acid, than the Emser Kranchen, and, if used cold, should act even more powerfully than selters.

187 Alkaline saline springs.

Representative: Carlsbad (Sprudel).

Analysis by E. Ludwig.

	Parts in 100,000.	Grains in U. S. gallon.
Sodium chloride	102.2300	59.6185
Lithium chloride	1.4100	0.8223
Potassium sulphate	18.6200	10.8588
Sodium sulphate	240.4900	140.2490
Strontium sulphate	0.0500	0.0292
Sodium carbonate	131.5248	76.7026
Magnesium carbonate	16.6491	9.7094
Calcium carbonate	32.2083	18.7833
Ferrous carbonate	0.2973	0.1734
Manganous carbonate	0.0203	0.0118
Sodium borate	0.4000	0.2333
Sodium phosphate	0.0740	0.0432
Sodium fluoride	0.5100	0.2974
Alumina	0.0400	0.0233
Silica	7.1500	4.1697
Total mineral ingredients	551.6738	321.7252

One mineral-water glass (6 oz.) contains 15.08 grains of mineral ingredients.

The physiological action of Carlsbad water is mainly due to sulphate of soda, carbonate of soda, chloride of sodium and carbonic acid, greatly modified by the temperature of the water.

Sulphate of soda is contained in the human blood. Small quantities are excreted by the kidneys, large quantities produce a laxative action. The continued use of sulphate of soda disturbs digestion, and causes catarrh of the intestines.

Carlsbad water is a very efficient remedy in *diseases of the liver and abdominal plethora*, rendering the fæcal matters very rich in biliary constituents and increasing the amount of phosphoric acid in the urine. Directions for warming it are given under Ems.

188 In *habitual constipation* due to sedentary habits, and connected with disturbed abdominal circulation, the Carlsbad waters, *especially if allowed to cool*, have a mild, but certain effect upon the bowels, which is more permanent than that produced by strong purgative waters.

In *ulcer in the stomach, warm* Carlsbad is the principal and most effective remedy.

In *hyperæmia of the liver*, arising from abdominal plethora, and not connected with diseases of the heart and lungs; in fatty degeneration of the liver, and granulated liver in its first stage; and in diseases of the liver arising from ague, in which case the spleen is

also affected—the Carlsbad waters merit their high reputation, and seldom fail to effect a cure.

In *catarrh of the hepatic ducts* and *gallstones*, and also in renal calculi and gravel, they prove very efficacious by eliminating solid concrements.

In those forms of *gout* in which catarrh of the stomach, hyperæmia of the liver and abdominal plethora are prominent symptoms, great and lasting benefits may be expected from their use.

Carlsbad water has an unpalatable taste which somewhat resembles salted mutton broth. In artificial Carlsbad, the taste is much improved by carbonic acid, and it is often prescribed *cold* in chronic affections, for which its use is indicated.

The so-called natural Carlsbad salt—*in its crystallized form*—is nothing but purified Glauber's salt, and does not differ from the commercial article except in price, which is about one hundred times greater, thus leaving ample margin for specious advertisement.

189 *In its pulverized form* the so-called natural and artificial Carlsbad salt-, although vastly differing in price, are of equal value, both, essentially, consisting of sulphate of sodium and potassium, and of carbonate and chloride of sodium, according to the analyses of *Sprudel* by Ludwig and Berzelius respectively.

Neither of them, therefore, represents the complex natural water. You cannot evaporate a mineral water and dissolve the entire residuum. Mineral pills and salts are therefore, in no sense, representatives of the natural water.

As Carlsbad waters, being rather weak and slow in their effects, are often reinforced, in Carlsbad itself, by the addition of the above-named salts, I prepare a double Carlsbad Sprudel, in which every ingredient of Carlsbad Sprudel is doubled, and a quadruple Carlsbad Sprudel in which every ingredient is quadrupled.

The double Carlsbad is somewhat stronger than *Marienbad* (Kreuzbrunnen), and if diluted with its own volume of warm water yields warm Carlsbad.

The quadruple Carlsbad approaches the strong bitter waters in effectiveness and yields, by dilution with its own volume of warm water, effervescent Carlsbad of double strength.

190 Marienbad (Kreuzbrunnen).

Analysis by Kersten.

	Parts in 100,000.	Grains in U. S. gallons.
Sodium sulphate	472.2500	275.4079
Sodium carbonate	114.0411	66.5064
Sodium chloride	145.3916	84.7890
Potassium sulphate	5.8463	3.4094
Lithium carbonate	0.6287	0.3667
Calcium carbonate	59.9492	34.9612
Strontium carbonate	0.1706	0.0995
Magnesium carbonate	46.0494	26.8551
Ferrous carbonate	4.5500	2.6535
Manganous carbonate	0.4991	0.2911
Aluminium phosphate	0.7031	0.4099
Calcium phosphate	0.2343	0.1369
Silica	8.8414	5.1560
Total mineral ingredients	859.1547	501.0426

One mineral-water glass (6 oz.) contains 23.49 grains of mineral ingredients.

This spring is often called the cold Carlsbad, but it is more powerful. The large proportion of sulphate of soda imparts to it aperient properties. It is especially suitable, if a strong action upon the bowels is desired, for persons too fond of good living who suffer from *abdominal plethora* and *habitual constipation due to sedentary habits and who have no tendency to congestion.*

Lithia waters.

The great importance of lithia is due to the fact that it forms with *uric acid* the most soluble urate, urate of lithia being even more soluble than its carbonate and that it attacks, redissolves and eliminates the urate deposits in gouty persons. *Lithia water* and *vichy with lithia* were introduced by me in 1864, and *Carlsbad with lithia* has been recently added.

191 Schultz's lithia water.

	Parts in 100,000.	Grains in U. S. gallon.
Lithium bicarbonate	146.08	85.191
Sodium chloride	125.66	73.482

One mineral-water glass (6 oz.) contains 4 grains of lithium bicarbonate, or about one gramme per siphon.

Dose: Mineral-water glass of 6 oz. three to four times per day.

Schultz's vichy with lithia.

	Parts in 100,000.	Grains in U. S. gallon
Lithium chloride	*36.550	21.3152
Potassium sulphate	20.404	11.8990
Sodium sulphate	11.771	6.8645
Sodium phosphate	0.422	0.2460
Sodium chloride	57.878	33.7531
Sodium bromide	0.013	0.0076
Sodium iodide	0.003	0.0015
Sodium carbonate	380.130	221.6842
Ammonium carbonate	0.469	0.2735
Calcium carbonate	25.003	14.5813
Strontium carbonate	0.232	0.1352
Magnesium carbonate	3.529	2.0580
Iron and manganese	traces	traces
Alumina	0.078	0.0455
Silica	6.406	3.7359
Total mineral ingredients	542.888	316.6005

* Equivalent to 58.48 parts lithium bicarbonate.

One mineral-water glass (6 oz.) contains 1. grain of lithium chloride (*equivalent to 1.6 grains of lithium bicarbonate*) and exactly the same amount of the other ingredients as vichy (*Grande Grille*).

Vichy with lythia.

Vichy with lithia is beneficial in cases of rheumatism, gout, etc., connected with excessive acidity by readily reducing the acid urates which are sparingly soluble to neutral urates which are easily soluble. It can be taken just as vichy.

192 Schultz's Carlsbad with lithia.

	Parts in 100,000.	Grains in U. S. gallon.
Lithium bicarbonate	58.480	34.104
Sodium chloride	102.230	59.619
Lithium chloride	1.410	0.822
Potassium sulphate	18.620	10.859
Sodium sulphate	240.490	140.249
Strontium sulphate	0.050	0.029
Sodium carbonate	131.524	76.703
Magnesium carbonate	16.649	9.709
Calcium carbonate	32.208	18.783
Ferrous carbonate	0.297	0.173
Manganous carbonate	0.020	0.012
Sodium borate	0.400	0.233
Sodium phosphate	0.074	0.043
Sodium fluoride	0.510	0.297
Alumina	0.040	0.023
Silica	7.150	4.170
Total mineral ingredients	610.152	355.828

One mineral-water glass (6 oz.) contains 1.6 grains of lithium bicarbonate, in addition to Carlsbad Sprudel.

In those forms of *gout* in which catarrh of the stomach, hyperæmia of the liver and abdominal plethora are prominent symptoms, and for which Carlsbad is much used, the *Carlsbad with lithia* should produce great and lasting benefits.

Lithia in American mineral waters.

Dr. Elwyn Waller, professor of chemistry at the school of mines, has read before the American Chemical Society a very interesting paper on the "Determination of lithia in mineral waters." After minutely describing the processes employed by him for the determination of lithia he continued:

"In order to test these methods upon water containing lithia, samples of several of the best known and widely advertised waters were purchased and submitted to examination.

193 "The results were somewhat surprising, and showed unquestionably that either the original analyses, on the strength of which those waters are now sold, were erroneous, on account of imperfection in the methods used, or, what is more probable, that the proportions of lithium in those waters are liable to great fluctuations.

"The results given were chiefly obtained by Carnot's fluoride method, but were in several cases confirmed by the use of other methods. The most scrupulous care was exercised to be sure of obtaining all of the lithium in the waters under examination, the spectroscopic indications having been used at every stage of the process.

"In the Farmville lithia water, purchased at the office of the company, no lithium could be detected by the spectroscope on moderate amounts of the water. On evaporating eight liters of the water, and treating in the manner described for the concentration of the lithia into a solution of small bulk, a lithia line was obtained in the spectroscope, but the amount was found to be too small to permit of a quantitative estimation. The experiment was repeated with ten liters of the water, with essentially the same result.

"With the Buffalo lithia water the reaction for lithium was more distinct when considerable quantities of the water were concentrated. From 20 liters of the water was obtained lithium sulphate corresponding to 0.0185 parts lithium bicarbonate per 100,000.

"In the Londonderry water, the lithia reaction could be obtained without great difficulty. Analysis of the water purchased by myself showed a little over 4 parts per 100,000. The company puts up some of the water in half-gallon bottles not charged with carbonic acid, and also some in pint bottles, (called in their circulars 'sulphocarbonated'), which is charged with carbonic acid, and has also

received the addition of some salts. The amount of salts added appears to be somewhat irregular. * * *

"The proportion of lithium was essentially the same as for the still water.

"I was told that several lots of water, purporting to come from these springs, had at times appeared on the market, in which
194 no lithia could be detected. As I learned that Dr. Endemann had obtained some water of that kind, I requested him to send me a bottle. He complied, and although the bottle bore all the labels and marks similar to those purchased by myself, no lithia could be detected in it. The water contained 5.2 parts total solids per 100,000. I have heard of others who had similar experiences.

"I naturally desired to obtain samples of these waters direct from the springs, taken by some one whom I knew to be disinterested. Attempts thus far have been unsuccessful. In the case of the Londonderry springs, all access is denied to visitors, and applications for water are referred to the bottling establishment in Nashua. * * *

"Tests were also made on the waters manufactured and sold by Carl H. Schultz as containing lithia. They were found to contain a little more lithia than claimed. *E. g.*, the formula on his 'vichy with lithia' calls for an amount corresponding to about 58½ parts lithium bicarbonate per 100,000. The analyses showed 60 to 62 parts." * * *—*From the Journal of the American Chemical Society, Vol. XII, No 6.*

It is to be regretted that the Doctor did not succeed in obtaining his samples direct from the source, as other chemists have found no lithia in the above-named springs. The quantities found by him are smaller than contained in Saratoga waters, which make no claim to be called lithia waters. It would, for instance, according to his results, take 370 gallons of Buffalo lithia to get as much lithia as contained in a single six-ounce glass of Carl H. Schultz's lithia water, or, in other words, *to get a single grain of lithium bicarbonate, it would be necessary to drink 92½ gallons of Buffalo lithia.*

195 **Muriated waters.**

Representative: Kissingen (Rakoczy).

Analysis by Liebig.

	Parts in 100,000.	Grains in U. S. gallon.
Potassium chloride	28.6901	16.7315
Sodium chloride	582.2044	339.5297
Sodium bromide	0.8385	0.4890
Sodium nitrate	0.9309	0.5428
Lithium chloride	2.0013	1.1671
Magnesium chloride	30.3789	17.7163
Magnesium sulphate	58.7083	34.2375
Magnesium carbonate	1.7044	0.9940
Calcium sulphate	38.9375	22.7075
Calcium phosphate	0.5612	0.3273
Calcium carbonate	106.062	61.8735
Ferrous carbonate	3.1575	1.8414
Silica	1.2904	0.7525
Ammonia	0.0912	0.0532
Sodium iodide, sodium borate, strontium sulphate, calcium fluoride, aluminium phosphate, (manganese carbonate)	traces.	traces.
Total mineral ingredients	855.5908	498.9633

One mineral-water glass (6 oz.) contains 23.39 grains of mineral ingredients.

The *Kissingen Rakoczy* has a refreshing, slightly bitter, salty taste, and stimulates the mucous membranes of the stomach. Hunger and thirst are increased. Its action is mainly *diuretic*, and, according to Dr. A. B. Granville, it is only aperient if large doses, two or three glasses, be taken. It at first not unfrequently produces costiveness, but its general tendency is to augment the secretion in the intestines, the action of which becomes at length perfectly quotidian and abundant. In *habitual constipation* and *chronic catarrh of the intestines*, the internal use of Kissingen is combined with *Kissengen bitter water*.

196 The Kissingen waters are very effective in certain forms of *indigestion* owing to *chronic catarrh of the stomach, deficient secretion of the gastric juice, liver disease*, and *abuse of intoxicating liquors;* also in *abdominal plethora in weak, irritable and scrofulous patients*, to whom the use of stronger waters, by causing relaxation of the mucous membrane of the intestines, might prove detrimental.

They have also been warmly recommended for *consumptive patients*, if suffering from troublesome catarrh, indigestion and disturbed nutrition; but it is advisable to dilute the spa with its own bulk of water.

In tumors of the *spleen*, due to *ague* or to *suppressed catamenia* and *hæmorrhoids*, the Kissingen treatment is often successful, but should be followed by the use of saline chalybeate waters.

The Kissingen waters have a great reputation for curing *gout and rheumatism*. By exciting the secretions of the intestines, kidneys and the skin, they reduce habitual plethora, and promote a healthy metamorphosis of matter. Patients suffering from *so-called irregular gout*, where the joints are not much affected and no paroxysms take place, sometimes feel an increase in the severity of the symptoms during the first few weeks of the Kissingen treatment, when a paroxysm of gout occurs which lasts for a week or a fortnight, after which the health improves rapidly. In this respect the effect of the water is similar to that of lithia water.

197 Homburg (Elizabethbrunnen).

Analysis by Fresenius.

	Parts in 100,000.	Grains in U. S. gallon.
Sodium chloride	986.090	575.0679
Potassium chloride	34.627	20.1938
Magnesium chloride	72.886	42.5056
Calcium chloride	68.737	40.0860
Ammonium chloride	2.189	1.2766
Lithium chloride	2.163	1.2614
Calcium sulphate	1.680	0.9797
Barium sulphate	0.100	0.0583
Strontium sulphate	1.776	1.0377
Magnesium carbonate	2.835	1.6533
Calcium carbonate	151.161	88.1541
Ferrous carbonate	2.317	1.3512
Manganous carbonate	0.152	0.0886
Calcium phosphate	0.094	0.0548
Magnesium bromide	0.286	0.1668
Magnesium iodide	0.003	0.0017
Silica	2.635	1.5366
Total mineral ingredients	1329.731	775.4741

One mineral-water glass (6 oz.) contains 36.36 grains of mineral ingredients.

This spring is much stronger in chlorides than the Rakoczy. If taken in larger quantities, it has a purging action; too long continued use has an emaciating effect.

198 Artificial saratoga water.

Analysis: Average of 15 of the principal Saratoga springs.

	Parts in 100,000.	Grains in U. S. gallon.
Sodium chloride	732.9505	427.4418
Potassium chloride	21.5600	12.5733
Sodium bromide	3.3658	1.9628
Sodium iodide	0.1810	0.1055
Lithium carbonate	4.7922	2.7946
Sodium carbonate	30.8351	17.9822
Magnesium carbonate	100.3087	58.4980
Calcium carbonate	144.4186	84.2230
Strontium carbonate	0.1184	0.0690
Barium carbonate	1.7266	1.0069
Ferrous carbonate	1.3865	0.8086
Potassium sulphate	2.1276	1.2408
Sodium phosphate	0.0130	0.0759
Alumina	0.5026	0.2931
Silica	2.8880	1.6842
Calcium fluoride, Biborate of soda, Organic matter,	traces	
Total mineral ingredients	1047.1746	610.7597

One mineral-water glass (6 oz.) contains 28.62 grains of mineral ingredients.

All the Saratoga waters have a common origin, and consequently do not differ in character. They all contain the same constituents in essentially the same order of predominance, and differ merely in concentration, which increases with the depth of the strata.

It is, therefore, evident that, whatever difference there may be in their physiological action, it must be mainly attributed to the degree of their concentration, and that the wonderful specific effects possessed by each separate spring have to a great extent their origin in the imagination of the proprietors.

Some Saratoga waters are named after famous European springs—for instance, *Saratoga vichy*. Most people are misled by the
199 name, believing the water to be similar in composition and effects to *vichy*, which is the great *alkaline* water, *carbonate of soda being its predominant ingredient*.

Here is a comparative analysis of both waters, showing their three principal ingredients in 100,000 parts:

	Vichy (Grande Grille).	Saratoga vichy.
Carbonate of soda	380.130	89.660
Chloride of sodium	57.878	220.660
Carbonate of lime	25.003	101.124

It will be seen at a glance that chloride of sodium is the predominant ingredient in Saratoga vichy—*just as in all other Saratoga waters*—that carbonate of lime comes next, and that carbonate of soda is the smallest. With the three principal ingredients *differing about 400 per centum each* from real vichy the use of that name does not appear to be justified.

In order to provide the medical profession with a reliable Saratoga water, which should be a true representative of all Saratoga waters combined, I have prepared the "Artificial Saratoga water." It contains, in exact average proportion, each mineral ingredient of 15 of the principal Saratoga springs, and is of a strength which lies between Congress and Hathorn, being four per cent. stronger than Congress. The springs which enter into its composition in equal parts are the following: *High Rock spring, Star spring, Selters spring, Pavilion spring, United States spring, Hathorn spring, Crystal spring, Congress spring, Geyser spouting well, Vichy spouting spring, Ballston artesian lithia well, Franklin artesian well, Conde Dentonian well, Union spring* and *Empire spring.*

200 Bitter waters.

Bitter waters derive their name from the taste of their chief ingredients, the sulphates of soda and magnesia. If they contain only sulphates, they are strong purgatives; but a prolonged use of them greatly disturbs digestion. The fluid in the intestinal canal is considerably augmented, only small quantities being absorbed.

But if bitter waters consist of a mixture of sulphates and chlorides, the bad effects due to sulphates are entirely overcome, and their action is so favorably modified that *they should be used with preference, whenever the use of bitter waters is required.* They are gentle *purgatives and diuretics.* If large doses be taken before breakfast, they purge strongly with gentle diuresis; if small doses be administered, they purge gently and produce a strong diuretic action. The latter effect is more generally observed by taking the water after breakfast.

Kissingen bitter water belongs to this class. It is identical in composition with Friedrichshall. Neither of them is a natural water, being prepared by mixtures of springs or by reducing the brine to a specific gravity of 1.022.

Kissingen bitter water.

Analysis by Liebig.

	Parts in 100,000.	Grains in U. S. gallon
Magnesium sulphate	514.3229	299.9426
Sodium sulphate	605.4596	353.0916
Potassium sulphate	19.8294	11.5041
Calcium sulphate	134.6406	78.5196
Sodium chloride	795.5703	463.9604
Magnesium chloride	393.3593	229.3991
Ammonium chloride	0.2891	0.1686
Lithium chloride	1.2500	0.7290
Magnesium bromide	11.3893	6.6420
Magnesium carbonate	51.9894	30.3190
Calcium carbonate	1.4700	0.8573
Total mineral ingredients	2529.5699	1475.1933

One mineral-water glass (6 oz.) contains 69.15 grains of mineral ingredients.

201 If a strong action upon the bowels is contemplated, as in *cases of considerable accumulation of fæces or congestion toward the head and lungs*, large doses are required at short intervals and before breakfast. In *abdominal plethora*, if due to indulgence in the pleasures of the table, to sedentary habits, diseases of the heart, or in pregnancy, a tumblerful in the morning can be continued some time without weakening the system. The action of the intestines is thereby regulated, and the water will, in many cases, be found preferable to Carlsbad. As a diuretic, the Kissingen bitter water can be used in certain cases of *dropsy* and *pleuritic and other exudations*. It is also eminently useful in *scrofula*, especially in swellings of the cervical glands, *in tumors of the cellular tissues, chronic inflammation of the mucous membranes and eruptions of the skin*.

Püllna.

In Bohemia.

Analysis by Struve.

	Parts in 100,000.	Grains in U. S. gallon.
Magnesium sulphate	1212.0572	706.8476
Sodium sulphate	1611.9349	940.0482
Potassium sulphate	62.5000	36.4487
Calcium sulphate	33.8971	19.7681
Magnesium chloride	246.5403	143.7773
Calcium chloride	11.0573	6.4483
Magnesium carbonate	91.8867	53.5870
Sodium phosphate	0.0416	0.0243
Silica	2.2917	1.3364
Oxide of iron	traces	traces
Alumina	traces	traces
Total mineral ingredients	3272.2068	1908.2859

One mineral-water glass (6 oz.) contains 89.45 grains of mineral ingredients.

Püllna contains principally sulphates and is a *strong*
202 *purgative.* It should be used when a rapid action upon the bowels is required, before breakfast or when digestion is absolutely completed. It is as strong as the Hungarian bitter waters of varying composition, which have been puffed into notoriety by enormous advertisements. But Püllna still remains the old famous bitter water.—By furnishing both bitter Kissingen and Püllna of uniform strength and effervescence, they are more reliable and agreeable to take than any imported purgative water.—

Dose for Pullna: ½ pint or less.

Earthy waters.

Wildungen (Helenenquelle).

Analysis by Fresenius.

	Parts in 100,000.	Grains in U. S. gallon.
Sodium sulphate	1.2994	0.7578
Potassium sulphate	2.7004	1.5748
Calcium carbonate	88.1166	51.3875
Magnesium carbonate	89.4461	52.1630
Sodium carbonate	59.7133	34.8236
Ferrous carbonate	1.3046	.7608
Manganous carbonate	0.5782	0.3372
Lithium carbonate	trace	trace
Sodium chloride	104.2994	60.8253
Silica	3.1002	1.8080
Total mineral ingredients	350.5582	204.4380

One mineral-water glass (6 oz.) contains 9.58 grains of mineral ingredients.

Wildungen is situated in Waldeck. The waters are characterized as earthy, because the bicarbonates of lime and magnesia predominate, all other ingredients being present in trifling quantities only. They are principally used in certain forms of *catarrh of the kidneys, catarrh of the bladder, stone in the bladder, and other affections of the urinary organs connected with difficult or painful voiding of the water.*

203 **Chalybeate waters.**

Representatives: Schwalbach and Pyrmont.

Iron water and pyrophosphate of iron water.

The most powerful natural chalybeates are those which contain much carbonic-acid gas, and, with the exception of iron, only a small amount of saline ingredients. The iron is dissolved in them as a bicarbonate of the protoxide. Chalybeates which are poor in carbonic acid, or which contain the iron as a sulphate, are generally considered as unfit for medicinal use. They produce catarrh of the stomach and intestines, and impair digestion.

The effects of iron are marked by two distinct features:

1. The number of blood globules and their hæmatine is augmented. This increase, in anæmic and chlorotic persons, may amount to one-third of the original number.

2. The *phosphoric acid* eliminated in the urinary water is diminished.

True chalybeates are most admirable remedies for *anæmia and all morbid conditions consequent upon it: such as certain forms of indigestion, constipation and diarrhœa, amehorrhœa, dysmenorrhœa, blenorrhœa of the uterus and the vagina, sterility and tendency to abortion. In certain diseases of the nervous system, in headache, neuralgia in the back, chorea, tremor, paralysis, hysteria and hypochondriasis, they also prove highly beneficial.*

It should be observed that food containing tannic acid—as tea and many preserves—is not admissible during a course of iron water.

Chalybeate waters prove highly beneficial after a course of other mineral waters whose specific action does not depend upon iron.

204 Schwalbach (Stahlbrunnen).

Analysis by Fresenius.

	Parts in 100,000.	Grains in U. S. gallon.
Ferrous carbonate	6.0700	3.5400
Manganous carbonate	1.3287	0.7744
Sodium carbonate	1.4538	0.8478
Sodium chloride	0.6771	0.3949
Sodium sulphate	0.7942	0.4632
Potassium sulphate	0.3776	0.2202
Calcium carbonate	15.3645	8.9603
Magnesium carbonate	13.9284	8.1228
Sodium phosphate and Borate and organic matter,	traces	traces
Silica	3.2031	1.8680
Total mineral ingredients	43.1974	25.1916

One mineral-water glass (6 oz.) contains 1.18 grains of mineral ingredients.

Pyrmont (Neubrunnen).

Analysis by Wiggers.

	Parts in 100,000.	Grains in U. S. gallon.
Sodium chloride	115.980	67.6372
Lithium chloride	0.180	0.1050
Potassium sulphate	6.940	4.0473
Sodium sulphate	28.900	16.8539
Magnesium sulphate	41.040	23.9337
Calcium sulphate	3.230	1.8837
Calcium carbonate	100.146	58.4031
Ferrous carbonate	4.320	2.5193
Manganous carbonate	9.560	5.5752
Sodium nitrate	0.009	0.0052
Alumina	1.720	1.0031
Silica	3.740	2.1811
Total mineral ingredients	315.765	184.1478

One mineral-water glass (6 oz.) contains 8.64 grains of mineral ingredients.

205 Carl H. Schultz's iron water.

Analysis.

	Parts in 100,000.	Grains in U. S. gallon.
Ferrous carbonate	12.763	7.443
All other ingredients	5.000	2.916
	17.763	10.359

One mineral-water glass (6 oz.) contains 0.36 grains of ferrous carbonate.

This iron water is very effective and stronger than any natural chalybeate.

Carl H. Schultz's pyrophosphate of iron water.

Analysis.

	Parts in 100,000.	Grains in U. S. gallon.
Pyrophosphate of iron	39.0635	22.7805
All other ingredients	5.0000	2.9160
	44.0635	25.6965

One mineral-water glass (6 oz.) contains 1.07 grains of pyrophosphate of iron.

The name of this preparation indicates that it furnishes two of the most essential substances to the system in a soluble and easily assimilated form.

206 *Comparative Table Showing the Total Mineral Ingredients in 100,000 Parts of Carl H. Schultz's Effervescent Mineral Waters.*

Bitter waters.	
Püllna	3272
Kissingen bitter water	2529½
Alkaline saline waters.	
Quadruple Carlsbad	2206½
Double Carlsbad	1103
Marienbad (Kreuzbrunnen)	859
Carlsbad (Sprudel)	551½
Muriated waters.	
Homburg (Elizabeth Quelle)	1330
Artificial Saratoga	1047
Kissengen (Rakoczy)	855½
Alkaline waters.	
Vichy (Grande Grille)	506
Bilin	495½
Obersalzbrunn	256
Muriated alkaline waters.	
Selters	370
Gleichenberg (Constantinquelle)	540½
Ems (Kränchen)	280
Lithia waters.	
Lithia water	272
Contains bicarbonate of lithium	146
Vichy with lithia	543
Contains bicarbonate of lithium	58½
Carlsbad with lithia	610
Contains bicarbonate of lithium	60¾

207 **Chalybeate waters.**

Pyrmont (Neubrunnen)	316
Contains bicarbonate of iron	$6\frac{63}{100}$
Schwalbach (Stahlbrunnen)	43
Contains bicarbonate of iron	6
Iron water	$17\frac{76}{100}$
Contains bicarbonate of iron	$12\frac{76}{100}$
Pyrophosphate of iron	$44\frac{06}{100}$
Contains pyrophosphate of iron	$39\frac{06}{100}$
Earthy waters.	
Wildungen (Helenen Quelle)	350½

The complete analysis of each water is on the bottle, and the waters are guaranteed to agree with these analyses.

Carl H. Schultz's
Mineral spring waters,
430–440 First avenue,
Between 25th and 26th streets,
New York.

208 United States Circuit Court, Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Etablissement Thermal de Vichy, Complainants,
vs.
LOUISA SCHULTZ, Executrix, Defendant.

It is hereby stipulated and agreed that the advertisement herewith produced, marked "Complainants' Exhibit Schultz Advertisement, February 16, 1899," is a true copy of an advertisement which was inserted by direction of the former defendant, Carl H. Schultz, deceased, in the publication entitled "Bonfort's Wine & Spirit Circular" for September 10, 1891, and shown on page 47 of said publication.

Dated Feb. 16, 1899.

ROWLAND COX,
Solicitor for Complainants.
BRIESEN & KNAUTH,
Solicitors for Defendant.

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Complainants' Exhibit Schultz Advertisement, February 16, 1899.

CARL H. SCHULTZ'S

Selters, Vichy, Carbonic,

LITHIA and VICHY with LITHIA, CARLSBAD, MARIENBAD, KISSENGEN, EMS, SCHWALBACH, PYRMONT, Etc.

Analyzed by the principal professors of chemistry in 1862, and endorsed as **absolutely pure** and of **correct composition**; prescribed by the medical profession; used by over 500 physicians and their families; by hospitals, clubs, hotels, first-class public places, and thousands of private families.

THE ONLY PURE AND CORRECT MINERAL WATERS SOLD IN NEW YORK CITY TO-DAY.

Address orders 430 to 440 First Ave., New York, N. Y.

210 United States Circuit Court, Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Etablissement Thermal de Vichy
vs.
LOUISA SCHULTZ, as Executrix of the Last Will and Testament of Carl H. Schultz, Deceased.

Testimony on behalf of complainants, taken pursuant to notice before John A. Shields, one of the standing examiners of the court, at the office of Rowland Cox, Esq., No. 229 Broadway, New York city, on Wednesday, February 15, 1899, at 11 a. m.

Appearances.

Rowland Cox, Esq., for complainants.
Antonio Knauth, Esq., for defendant.

ERNEST ELLSWORTH SMITH, being duly sworn and examined as a witness on behalf of complainants, deposes and says as follows:

By Mr. Cox:

Q. 1. Please state your name, age, residence and occupation?

A. Ernest Ellsworth Smith; age, 31 years; residence, New York city; occupation, chemist.

Q. 2. Please state at what institution you were graduated
211 and what education and experience you have had as a chemist?

A. I am a graduate of the Sheffield scientific school, Yale university, in the year 1888; I received the degree of doctor of philosophy from Yale university in 1891; from the years 1888 to 1891 I was instructor in physiological chemistry in the Sheffield scientific school; from 1891 to 1895 I was engaged in original investigations in a private laboratory; from 1895 to the present time I have held the position of director of the analytical laboratory of Fraser & Co., 262 Fifth avenue, New York city.

Q. 3. It is true, is it not, that you were graduated as a physician and received a degree?

A. I am a graduate of the Bellevue Hospital medical college in New York.

Q. 4. State whether or not there is a difference of opinion among physicians as to the therapeutical result connected with the use of a natural and an artificial water, and give briefly your reasons for your answer?

A. There is a difference of opinion among physicians. My reason for so stating is that I have talked with various physicians and have found such a difference of opinion to exist.

Q. 5. State, if you know, whether the existence of this difference of opinion is also deducible from the literature relating to the subject?

A. It is.

Q. 6. What is carbon dioxide?

A. Carbon dioxide is a chemical substance, which under the ordinary conditions of temperature and pressure, is a gas composed of carbon and oxygen in about the proportions of three parts of carbon to eight parts of oxygen chemically united, and which is formed usually by acting upon marble or some other form of carbonate with acids, the carbonic-acid gas being liberated.

Q. 6½. State whether or not there is a well-defined difference between water which is charged with carbon dioxide and one which is not, and give your reasons for your answer?

A. There is a difference between a water containing carbon dioxide and one that does not. The difference is first, a chemical
212 difference, and second, a difference in therapeutic action. The difference in therapeutic action may not be evident when a small amount of water is taken, but if a considerable amount is taken the difference may be marked. This difference is brought out by a description of the action of carbonic-acid water stated by Carl Schultze in a publication by him on mineral spring waters in 1865, and I read an abstract from his statement:

"Carbonic-acid water, like all good things, can be taken in excess. The symptoms in such cases directly resemble those produced by the inhalation of the gas, and indeed are often due to an actual inhalation, especially if large tumblers be used and a great deal of time be taken in drinking the water. The gas acts mechanically like young beer and sweet cider in which fermentation is going on by distending the stomach and intestines and impeding circulation. It is carried to the brain, benumbs the nerves and produces dizziness and vertigo."

The extract I have read is from a book entitled "Mineral Spring Waters, by Carl H. Schultz, published in New York in 1865, by B. Westerman & Co." The extract is found on page 22. The book is in the Astor library, and I was not able to obtain a copy of it.

Q. 7. Please state whether the quotation contained in your last answer as having been taken from a book of which the former defendant Schultz is held out as the author, is supported by authoritative publications relating to the subject?

A. It is.

Q. 8. It is true, is it not, that it is a generally accepted theory about which there is no doubt?

A. It is true; yes, sir.

Q. 8½. What is the difference between a water which is charged with carbon dioxide and one which is not?

A. That question I have answered in part.

213 Q. 9. Are the two waters, one which is charged with carbon dioxide and one which is not, thereapeutically and chemically different?

A. They are.

Q. 10. Is the water which is charged with carbon dioxide and one which is not—are they different from each other commercially?

A. They are.

Q. 11. Take the Poland water, for instance, that which is charged

with carbon dioxide—let me begin by asking whether Poland water charged with carbon dioxide and Poland water not charged with carbon dioxide are both sold?

A. They are.

Q. 11½. Are they recognized in the trade and by the public as being different waters?

A. They are.

Q. 12. And is the same true of substantially all other waters which are charged with carbon dioxide and those which are in a natural condition?

A. The same difference is recognized in the case of the waters that are sold in those two different conditions.

Q. 13. It is true, is it not, of the waters of all mineral springs that where they are artificially charged with carbon dioxide they are offered and sold to the public as being different from the water in its natural condition?

A. I believe it is, so far as I know.

Q. 14. When you say as far as you know, what do you mean?

A. Well, your statement was a pretty broad, general statement. I am familiar with the sale of those waters to a considerable extent, but I am not familiar with all of the sale of such waters.

Q. 15. As far as you know you mean to say, do you not, that——

A. That the difference you mentioned exists and is recognized.

Q. 16. Will you have the kindness to let us know if you are able to do so, whether the demand for mineral waters and particularly bottled waters, has increased within the United States say within the last decade or about that period?

A. The demand for bottled mineral waters has increased continually during the last twenty years, which period is the
214 time during which the waters have been sold to a very considerable extent.

Q. 17. Do you mean to say that prior to about twenty years ago there was substantially little or no demand for mineral waters in the United States?

A. About twenty years ago the demand for mineral waters was a fraction only of the demand at the present time.

Q. 18. When you say a fraction, what do you mean—that it was very small?

A. I mean that the demand probably was less than a quarter of the demand at the present time, probably much less, but it is difficult to say how much, because at the present time there are many waters being sold, the sales of which are not recorded.

Q. 19. Will you please look at the bottle I now show you and state what it is (showing witness bottle)?

A. That is a bottle of water from the so-called vichy spring at Saratoga, called "Saratoga vichy water."

Q. 20. Are you able to say whether the Saratoga Vichy Spring Company sell their "Saratoga vichy water," so called, put up in bottles with a label like that forming a part of the exhibit referred to in your last answer?

A. They do.

The bottle referred to by the witness is offered in evidence by complainants' counsel, and is marked "Complainants' Exhibit Saratoga Vichy, February 15, 1899, J. A. S., ex'r."

Q. 21. This exhibit which has just been offered in evidence is a bottle of the water of the Saratoga Vichy Company, put up in the way in which they sell it?

A. It is.

Q. 22. Please look at the price-list I now show you and state what it is?

A. This is a price-list of Parke, Davis & Co., manufacturing chemists.

Q. 23. Of what date?

A. 1898.

Q. 24. Please state what the standing of Parke, Davis & Co. is, and what is the relative magnitude of their business?

215 A. Parke, Davis & Co., is recognized as a company of manufacturing chemists of high standing, and probably the largest producers in this country.

Q. 25. And they have been very large manufacturing chemists for years past, have they not?

A. For years past, yes, sir.

The catalogue referred to by the witness is offered in evidence by complainants' counsel, and is marked "Complainants' Exhibit Parke Catalogue, February 15, 1899, J. A. S., ex'r."

Complainants' counsel gives notice that he will print as part of the record, and use the following parts of the catalogue, appearing on page 100: "Vichy 1 drachm salt equals 1 pint natural water, $3.45 (per doz. 2-oz. bottles) $5 (per doz. 4-oz. bottles)."

Q. 26. Look at the book I now show you and state what it is?

A. This book is a price-list and catalogue of drugs and chemicals issued by W. H. Schieffelin & Co.

Q. 27. W. H. Schieffelin & Co. are a very large concern, are they not?

A. They are a very large concern and large importers and jobbers.

Q. 28. And have been a very large concern for years past?

A. They are an old and well-recognized and established house.

Q. 29. They are one of the oldest and largest drug houses in the city of New York, are they not?

A. They are, yes, I believe.

Q. 30. What is the date of this price-list of W. H. Schieffelin & Co.?

A. 1891.

Complainants' counsel offers in evidence the price-list referred to by the witness, and the same is marked Complainants' Exhibit Schieffelin Price-list, February 15, 1899, J. A. S., ex'r.

Complainants' counsel gives notice that he will print and use the following part of the catalogue appearing on page 273:

216 "Vichy salt to make vichy water, 50 papers, per box, $15. Vichy salt from the springs, each package for 20 gals. genuine vichy water, $15."

Q. 31. Please look at the book which I now show you and state what it is?

A. This book is a price-list bearing the date March 15, 1898, and published by John Wyeth & Brother, manufacturing chemists, of Philadelphia.

Q. 32. What is the standing of John Wyeth & Brother, of Philadelphia, in the trade, and what is the magnitude of their business?

A. John Wyeth & Brother are manufacturing chemists of high standing, an old-established house, and are recognized as men of standing in the profession.

Q. 33. Is the house of John Wyeth & Brother one of the largest in the trade?

A. It is one of the largest houses in the trade; yes, sir.

Complainants' counsel offers in evidence the book last referred to by the witness, and the same is marked "Complainants' Exhibit Wyeth Price-list, February 15, 1899, J. A. S., ex'r."

Complainants' counsel gives notice that he will print and use that part of the said catalogue of John Wyeth & Brother appearing on page 45, which is as follows:

"Wyeth's granular effervescing vichy, per dozen 4-oz. bottles, $4; per pound bottle, $1."

"The well-known and valuable therapeutic properties of the vichy water are strictly and carefully imitated, following the French government analysis. The most popular of the three springs is the one selected, namely, the Grand Grille. Each drachm of 60 grains or a heaping teaspoonful, is equivalent to a tumbler full of genuine vichy water."

Q. 34. Please state whether you have found in the price-
217 list and publications of other houses of established reputation and standing statements substantially the same as those which I have quoted from the catalogues which have been offered in evidence, referring to and making use of the expression "genuine vichy water" or "natural vichy water"?

A. I have.

Cross-examination by Mr. KNAUTH:

X Q. 35. Does the natural vichy water contain any carbon dioxide?

A. It does.

X Q. 36. How much?

A. The amount varies in the different springs. The figures are given with the analyses.

X Q. 37. How much is there in the Grande Grille water?

A. I haven't that analysis with me and I don't remember it. The amount is relatively small in all of those springs compared with the charged waters.

X Q. 38. Do you in your answer refer to the bottled water of the springs as it is known to you or to the water at the springs at Vichy?

A. I refer to the water at the springs at Vichy as revealed by the analysis. I have not myself seen the waters and I have not myself analyzed them at the springs.

X Q. 39. You have never been at Vichy?

A. I have never been at Vichy.

X Q. 40. In what form is the carbon dioxide contained in the natural vichy water when it is bottled at the springs?

A. It is present in three forms, that in stable combination, that in partial or loose combination and that in a free condition.

X Q. 41. Has the exposure to the air of the natural vichy water any tendency to free more portions of the carbon dioxide than where originally in a free condition?

A. The exposure to the air has a tendency to allow the free carbonic acid to escape and has also some tendency to allow the loosely combined carbonic-acid gas to escape, but the escape of this gas is much slower and requires a much longer exposure.

218 X Q. 42. Do you know how long the natural water of the Vichy springs is exposed to the air before it is bottled?

A. I do not.

X Q. 43. Is there any carbon dioxide in the bottled water of the Vichy springs as you know that water?

A. There is.

X Q. 44. How long have you known the bottled water of the Vichy springs?

A. I cannot state exactly; I do not remember.

X Q. 45. Did you ever see any bottle of natural vichy water previous to the time that you became interested in this litigation?

A. Oh, yes.

X Q. 46. When?

A. Why, regularly in the carrying out of my duties in my place of business.

X Q. 47. Since when?

A. I have been connected with Fraser & Co. four years. I don't remember when I saw vichy water or anything very difficult about it, but I am familiar in a general way with the stock of vichy waters that are kept on hand and that is one of them. I can't state when it was first put in.

X Q. 48. Do you mean Fraser & Co. keep a stock of vichy waters?

Complainants' counsel objects to this line of examination on the ground that it is not within the limits of the examination-in-chief, the objection to be of force wherever it is pertinent, without repetition.

A. I should have stated in my answer mineral waters, not vichy waters. The stock of mineral waters is what I intended to state. We did keep a stock of mineral waters.

X Q. 49. Did you ever drink any natural vichy water?

A. I have.

X Q. 50. How long have you known it as a drink and by using it?

A. I have never used it regularly.

X Q. 51. Do you remember when you first drank it?

A. No, I do not. I have drunk vichy water many times
219 not knowing whether I was drinking real vichy or something else, so that I can't state the answer to that question.

X Q. 52. How did that happen?

A. How did what happen?

X Q. 53. That you drank vichy water without knowing whether the water was natural or not?

A. Because I didn't know its history.

X Q. 54. How long have you known the name or term "vichy water" at all in the United States?

A. I can't answer that question either; it is indefinite in my mind how long I have known it.

X Q. 55. Can you not even tell approximately how long?

A. Why, I have only known it from business connection or professional connection for four years. I undoubtedly heard of vichy water before then, but have no means of offering any testimony in regard to it.

X Q. 56. Do you not drink vichy sometimes with your meals or otherwise?

A. No, I do not. Occasionally I drink vichy in taking a drink at the soda-water fountain or at a bar.

Complainants' counsel objects to all of the testimony adduced on cross-examination which does not relate to the subjects inquired about in the direct examination, the objection to be of force wherever it is pertinent the same as if specifically repeated in each instance.

Complainants' counsel states that he has no objection to defendant's counsel examining the witness on any subject he may see fit, but insists that if he does so he will make the witness his own witness; this statement and suggestion to be of force wherever it may be pertinent.

X Q. 57. How long have you known vichy water at such soda fountains or at bars?

A. During such time as I remember anything about those matters.

X Q. 58. Do you know whether there was any carbon dioxide in such water which was furnished to you?

220 Mr. Cox: Objected to as the witness has not stated that such water was furnished to him.

A. The last time that I asked for vichy at the bar I received a bottle labeled "seltzer," which was charged with carbonic-acid gas.

X Q. 59. You have quoted a portion of Defendant's Exhibit No. 37 to the effect, substantially, that carbonic-acid water like other things can be taken in excess. Do you not find the following sentence immediately following your quotation in the book referred to?

"In delicate persons with very impaired digestion, almost anything—a glass of cold water or a small piece of tenderloin—will cause similar symptoms."

A. I do.

X Q. 60. Do you consider yourself competent to testify whether or not the natural vichy water can be drunk to excess, so as to be hurtful to the drinker's health?

A. I think I might so testify regarding that point.

X Q. 61. What is your opinion upon the subject?

A. I think that any water may be drunk to excess.

X Q. 62. How old were you twenty years ago?

A. I guess I was eleven.

X Q. 63. What did you know at that time about the trade in bottled mineral waters in this country?

A. Nothing.

X Q. 64. When did you first become acquainted with the trade in bottled mineral waters?

A. Well, four years ago.

X Q. 65. In what manner?

A. Through my connection with Fraser & Company, who handled such waters, and through my connection with their laboratory in analyzing such waters.

X Q. 66. Then when you testified as to the extent of the trade in bottled mineral waters twenty years ago, you did not mean to testify from your own knowledge at that time?

A. Not from my own knowledge at that time.

221 X Q. 67. Please state under what heading the item relating to vichy salts which you quoted from the price-list of Parke, Davis & Co., of 1898, is found in that catalogue?

A. Under the heading of "granular effervescing preparations."

X Q. 68. Is it your opinion that this item refers to a water or to a salt?

A. It refers, as I take it, to a salt for preparing water.

X Q. 69. Do you know how long artificial vichy salts have been made and sold in this country under that name?

A. I do not.

X Q. 70. How long have you been familiar with them?

A. Not longer than three or four years.

X Q. 71. Do you know anything about any salts manufactured from the natural vichy water of the vichy springs?

Objected to by complainant's counsel as not within the range of the examination-in-chief, the objection to be of force whenever pertinent.

A. Why, such salts may be manufactured or may not; I am not in a position to know.

X Q. 72. What do you understand by the phrase used in the catalogue of John Wyeth & Brother "Wyeth's granular effervescing vichy"?

A. I understand that to refer to a product which they sell under that name.

X Q. 73. Do you understand that to be a manufactured product?
A. Yes.
X Q. 74. Manufactured by Wyeth or under his direction?
A. Yes.
X Q. 75. Have you ever seen that product?
A. I have not.

Redirect examination by Mr. Cox:

R. D. Q. 76. Referring to the book written by Carl Schultz, published in 1865, a copy of which it appears has been offered in evidence by defendant's counsel and marked Defendant's Exhibit No. 37, January 31, 1898, please state whether you find this passage on page 13?

222 "The purification of carbonic-acid gas has seemed to us from the beginning a subject of the greatest importance, and we have labored conscientiously to invent and construct proper apparatus and to find suitable reagents for the perfect removal of its contaminations."

A. I do.

R. D. Q. 77. Please state whether on page 15 you find the following:

"Mixtures of air with carbonic-acid gas in large proportions benumb the system by paralyzing the nerves; first affecting volition and sensation, and if the application be too long continued proving fatal. Carbonic acid on that account has enjoyed the special honor of being classed among the poisons but we should not overlook the fact that that property is shared by all gases, not excepting oxygen, when inhaled in a pure state."

A. I find this language, you quoted on page 15.

R. D. Q. 78. You find this language, do you not, on page 17:

"Carbonic-acid gas is used in intestinal obstructions produced either by an accumulation of fœcal matter or by internal strangulations and intussusceptions and twistings. Apart from its mechanical and endosmotic effects it acts upon the muscular coats of the organs by absorption and excites in the neighborhood of the affected parts peristaltic contractions by which the obstructions may be removed."

A. I find the language quoted on page 17.

R. D. Q. 79. You find this on page 18, do you not:

"A bath in carbonic-acid water has somewhat different effects. According to Althous, these vary very much according to the temperature of the water. If the bath is cold sensation of burning in the skin and an internal chill is felt, but if the temperature is 86 degrees or 88, no chill is perceived."

A. I find the language quoted on page 18.

223 R. D. Q. 80. You find this on page 21, do you not:

"Carbonic-acid water when drunk, produces an exhilarating effect upon the system; it accelerates the pulse, renders the head clear and the mind cheerful. It has a pleasing, cooling and pungent effect upon the palate. Carbonic acid forms the chief spice

of all cold drinks. * * * Carbonic-acid water stimulates the gustatory nerves, the flow of saliva and the secretion of gastric juices. * * * It essentially promotes digestion by facilitating the assimilation of food and redissolving its mineral ingredients."

A. I find the language quoted on page 21.

R. D. Q. 81. You find on page 23, do you not, the following:

"Carbonic acid is the chief remedy in chronic catarrhs, not only of the stomach, intestines, kidneys and bladder, but also of the air passages."

A. I do.

R. D. Q. 82. *I* find on page 24 the following:

"All our artificial mineral waters contain an excess of carbonic-acid gas and their effects upon the system partake of the general character of carbonic-acid water as modified by the mineral ingredients dissolved in it."

A. I do.

By agreement of counsel the signature of the witness is waived. (Complainants rest.)

224 Circuit Court of the United States, Southern District of New York.

La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, Complainants,
vs.
Carl H. Schultz, Defendant.
} In Equity.

The demurrer of Carl H. Schultz, defendant, to the bill of complaint of La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, complainants.

This defendant, by protestation, not confessing all or any of the matters in the said complainants' bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, does demur to said bill, and for cause of demurrer shows:

First. That the said complainants have not in their said bill of complaint made profert of the instruments and documents under which they allege title or any proprietary or leasehold rights to the mineral springs mentioned in the bill, nor of the agreements in relation thereto that are mentioned in the bill of complaint, nor of the decrees set up in the bill of complaint, nor of the charter or certificate of incorporation of the complainant La Compagnie Fermiere de l'Etablissement Thermal de Vichy.

Second. That the said complainants have not in their said
225 bill of complaint disclosed such a compliance with the acts of Congress and the treaties between the United States and the French Republic as entitles them to prosecute their said bill of complaint against this defendant in this court, and have therefore failed to show the jurisdiction of this court.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint (which the said defendant reserves the right to interpose and specify *ore tenus*), this defendant does demur thereto and to all the matters and things therein contained, and humbly prays the judgment of this court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

CARL H. SCHULTZ, *Defendant.*

BRIESEN & KNAUTH,
Solicitors for Defendant.

STATE OF FLORIDA, }
County of Clay, } ss:

Carl H. Schultz, being duly sworn, deposes and says: That he is the defendant in the above-entitled suit; that he has read the foregoing demurrer to the bill of complaint therein, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

CARL H. SCHULTZ.

Subscribed and sworn to before me this 19th day of March, 1892.

C. FABIAN LAW,
N't'y Pub., State at Large.

I certify that in my opinion the foregoing demurrer of Carl H. Schultz to the bill of complaint of La République Française
226 and La Compagnie Fermière de l'Établissement Thermal de Vichy, complainants, is well founded in point of law, and proper to be filed in the above-entitled cause.

ANTONIO KNAUTH,
Of Counsel for Defendant.

Circuit Court of the United States for the Southern District of New York.

LA RÉPUBLIQUE FRANÇAISE and LA COMPAGNIE FERmiere de l'Etablissement Thermal Vichy, Complainants,
vs.
CARL H. SCHULTZ, Defendant. } In Equity.

TOWNSEND, *J.:*

This case is presented by a demurrer to a bill in equity for an injunction against the use of the word "Vichy" by defendant.

The bill alleges that the complainants, The Republic of France, and the "Compagnie Fermière de l'Etablissement Thermal de

Vichy," hereafter called the Vichy Company, are respectively owner and lessee of various mineral springs in and about the town of Vichy, the waters of which are known under the name of "Vichy" waters; that the reputation of these waters for their medicinal qualities is very great throughout the United States; that the name "Vichy," as applied thereto, is of great value to the complainants, &c.;
227 that they have the exclusive title to said springs, and to the use of said name in connection therewith.

The bill further alleges that, in the year 1344, one Jean, Lord of Vichy, being then the owner of certain springs in France, sold the same to one Pierre, Duke of Bourbon; that afterwards, in 1531, the then King of France, Francis the First, confiscated the property of the house of Bourbon; that thereupon and afterward the Crown of France became the owner of said mineral springs and remained such until 1790, when said springs were united to the public domain of the State of France; that in June, 1853, the French Empire, by imperial authority of Napoleon the Third, and by its several ministers and departments, leased and conceded to a certain firm of Lebobe, Callou & Co., of the city of Paris and of the town of Vichy, all the right and privilege of taking the waters from said springs and the preparation and sale thereof, which lease was for the term of thirty-three years, to wit, until 1886.

The bill further alleges that the Vichy Company was duly formed and established according to French law, and has succeeded to the rights of said prior lessees, and acquired all the property, rights, privileges and franchises from said prior owner of the lease, and that by a certain agreement duly entered into between the minister of public works, commerce and agriculture and the said Vichy Company, which agreement is dated April, 1864, and which was sanctioned by the imperial authority, the lease was extended until 1904.

The bill further alleges that, on September 4, 1870, the Empire of France was overthrown, and that the rights, property and privileges of said empire, including its property in and title to said Vichy springs, devolved upon the complainant, The French Republic, whereupon it duly became, and has ever since remained, the sole and exclusive owner of the aforesaid mineral springs and thermal establishment at Vichy, and entitled, subject to the terms of
228 the said lease, to the exclusive property in and to the use and enjoyment of the same, including the right to designate and brand the said mineral waters by the name "Vichy."

The first ground of demurrer assigned is as follows:

"That the said complainants have not in their said bill of complaint made profert of the instruments and documents under which they allege title or any proprietary or leasehold rights to the mineral springs mentioned in the bill, nor of the agreements in relation thereto that are mentioned in the bill of complaint, nor of the decrees set up in the bill of complaint, nor of the charter or certificate of incorporation of the complainant, La Compagnie Fermière de l'Etablissement Thermal de Vichy."

In support of this demurrer, defendant cites certain text-books and cases. An examination of them shows that they do not apply

to this case. Several of the citations state the rule in actions at law. The bills in equity referred to were, with one exception, for the alleged infringement of patents. In such cases, the patent itself is the foundation of the statutory right of the complainant. It is, therefore, necessary for him either to give a full description of the patented invention, or to refer to, and make profert of, the patent.

Post *v.* Hardware Co., 25 Fed. Rep., 905.

At common law, where title was in issue and depended upon a deed, the party was bound to make profert thereof. But no such profert was necessary in a case where the title was mere inducement to an action, as in trespass or case.

Gould on Pleading, ch. 8, sec. 47.
Stephen on Pleading, 381.

This suit is brought to restrain an alleged injury to an incorporeal right. The gist of the suit is the tortious act.

By the demurrer, all the material allegations of the bill
229 are admitted; that the complainant, The Republic of France and its predecessors, have, for several hundred years, owned these springs; that the complainant, The Vichy Company, has a lease of the springs which was extended by imperial authority until 1904, and that the defendant has been, and is, manufacturing counterfeit waters without license, to which he applies labels with the word "Vichy" printed thereon, to the great damage of complainants.

The claim of title to the springs is not in issue; it is merely inducement to the alleged infringement, the actual and threatened wrong, which is the foundation of the action.

In equity pleadings, the party should allege the facts with sufficient fulness, so that the court, assuming them to be true, can collect that he has title, and can make the facts the basis of a decree if the case be admitted by the answer.

6 Am. & Eng. Encyclopedia of Law, 756;
Heard Equity Pleadings and Precedents, 28;
1 Daniell's Chancery Pleadings and Practice, 361;
Webber *v.* Gage, 39 N. H., 182.

"The nature of a conveyance or alienation should be stated according to its legal effect rather than its form of words."

1 Daniell's Ch. Pl. and Pr., 363.
Story's Equity Pleadings, sec. 241.

If the defendant can show that any of the instruments referred to are material, or essential to the preparation of his defense, he can apply for the production of such instruments in accordance with the usual practice in chancery.

The second ground of demurrer assigned is as follows:

"That the said complainants have not in their said bill of
230 complaint disclosed such a compliance with the acts of Congress and the treaties between the United States and the

French Republic as entitles them to prosecute their said bill of complaint against this defendant in this court, and have, therefore, failed to show the jurisdiction of this court."

Complainants claim that the word "Vichy" is not a trade-mark, but a trade name, and, as such, protected upon principles analogous to those applied to trade-marks.

Although defendant claims that this word is a trade-mark, much of his argument proceeds upon the theory that it is not a trade-mark. In that event he contends that complainants have failed to show any law under which they are entitled to protection or any right to the exclusive use of the term.

Unless the word "Vichy" is a trade-mark, the complainants are entitled, on the facts alleged in the bill, to an injunction against the use of it by defendant. They allege title to all the mineral springs situated in Vichy, and the exclusive right to the sale of the waters thereof, and that the name "Vichy," as applied to said waters, has become of great value to the complainants, and has always constituted an important and necessary incident and means to the sale of said waters. That such a name may be so used, and will be protected against infringement by other persons not obtaining their product from the same locality, is too well settled for discussion.

Del. and Hudson Canal Co. *v.* Clark, 13 Wall., 311;
Newman *v.* Alvord, 51 N. Y., 189;
The Congress and Empire Spring Co. *v.* High Rock Congress Spring Co., 45 N. Y., 291;
Anheuser-Busch Brewing Assoc. *v.* Piza, 24 Fe*b*. Rep., 149;
Apollinaris Co. (Limited) *v.* Norrish, 33 Laws Times Reps. (N. S.), 242.

231 Whether a geographical name may become a trade-mark when adopted as such, where its owner is the owner of the place of origin and has the monopoly of the vendable product, is perhaps an open question.

Browne on Trade-marks, 2nd ed., secs. 91, 182, 521.
Brown Chemical Co. *v.* Meyer, 139 U. S., 540.
Judge Putnam in City of Carlsbad *v.* Tibbetts, 51 Fed. Rep., at p. 856, citing cases.

But I do not think it necessary to pass upon this question at this time, because the rights of the complainants may be determined by a consideration of the treaties between the United States and the French Republic referred to in the demurrer.

The defendant, claiming that the word "Vichy" is a trade-mark, contends that complainants are not entitled to relief, because they have failed to comply with the provisions of the treaty of April 16, 1869, between the United States and France, or of the general treaty of March 20, 1887, between certain countries, including the United States and France, for the protection of industrial property.

I shall not consider the treaty of 1869, because, as the treaty of

1887 covers the whole subject-matter of the former treaty, it may be considered as impliedly repealed.

Murdock *v.* City of Memphis, 20 Wall., 617;
King *v.* Cornell, 106 U. S., 395.

In the industrial property treaty of 1887, these three expressions are used:

"Marque de fabrique," translated, "trade-mark."
"Marque de commerce," translated, "commercial mark."
"Nom commercial," translated, "commercial name."

232 The treaty provides that every "trade-mark or commercial mark, regularly deposited in the country of origin, shall be admitted to deposit, and so protected in all the other countries of the Union."

25 U. S. Stats. at Large, art. VI, p. 1376.

And the final protocol, on page 1380, paragraph 4, is as follows:

"Paragraph 1, of article VI, is to be understood in the sense that no trade or commercial mark shall be excluded from protection, in one of the States of the Union, by the mere fact that it may not satisfy, in respect to the signs composing it, the conditions of the laws of this State, provided that it does not satisfy in this regard the laws of the country of origin, and that it has been in the latter country duly deposited. Saving this exception, which concerns only the form of the mark, and under reservation of the provisions of the other articles of the convention, the domestic legislation of each of the States shall receive its due application."

Article VIII of the treaty is as follows:

"The commercial name shall be protected in all the countries of the Union, without obligation of deposit, whether it forms part or not of a trade or commercial mark."

The question raised by this demurrer is whether the word "vichy" is a trade-mark or commercial mark, in which case it is claimed that it can receive no protection without registration, or a commercial name, as to which no such obligation exists. It is not alleged in the complaint that the word "vichy" has been registered. Whether such registry is required in the case of a trade or commercial mark it is unnecessary to consider. It is only necessary to inquire whether the word "vichy" is or is not a *non-commercial* or commercial name.

233 As the two terms, "commercial mark" and "commercial name," used in the treaty, are translation- of terms used in the civil law of France, it becomes necessary to examine their meaning in said system, in order to understand the distinction between them.

The distinction between a trade-mark and a commercial mark is pointed out by Pouillet, in his work on "Marques de Fabrique," sec. 6, from which I translate as follows:

"A trade-mark is not a commercial mark, and it is with reason that the law mentions both.

The trade-mark is especially or peculiarly the mark of the manufacturer, of him who creates the product, who manufactures it.

The commercial mark is that of the dealer, of him who, receiving the product of the manufacturer, sells it, in his turn, to the consumer."

And again, in section 63:

"The name of a town, or, more generally, a name of a locality, may, like an ancestral name, serve as a trade-mark; yet, here still, it is on condition that the name shall be presented under a distinct, special form, always the same. It is this peculiar expression which constitutes the mark, and not the name taken separately, and for itself."

It will thus be seen that our word trade-mark comprehends both the *marque de fabrique* and *marque de commerce* of France.

Browne on Trade-marks, sec. 85.

Under the title "Non-commercial," Pouillet divides the various classes of commercial names into the general head of names of manufacturers and names of localities.

He defines the commercial name as follows:

SEC. 374. "The commercial name is the name of the indi-
234 vidual, or any name which is the property of a merchant, without reference to its use as a mark, or trade-mark, in a distinctive form. * * * It is the name considered as the accessory of the business, as the *pavillon de la merchandise*," which I understand to mean "sign" or "brand," or "standard," of the goods.

He adds: "M. Gastambide says, speaking of the name from a commercial point of view, 'The name will be for us a mere means of securing good will.'"

Under sections 394–411 of "*Noms Commercial*" the author includes names of places and discusses fully the rights of parties under the law of France, who claim the exclusive use of a name of a locality, including owners of mineral waters or springs.

It therefore appears that the name "vichy" is a commercial name, and, as such, is protected under the industrial property treaty, without obligation of deposit, whether it does or does not form part of a trade or commercial mark.

The demurrer is overruled.

(Endorsed:) United States circuit court, southern dist. New York.—La République Française and ano'r *vs.* Carl H. Schultz.—Decision, Townsend, J.—U. S. circuit court, Filed July 3, 1893.—John A. Shields, clerk.

235 At a stated term of the circuit court of the United States for the southern district of New York, held in the United States court-house and post-office building, in the city of New York, on the 31st day of July, 1893.

Present: Hon. William K. Townsend, judge.

La République Française and La Compagnie Fermière de l'Établissement de Vichy, Complainants,
against
Carl H. Schultz, Defendant.

The defendant in the above-entitled cause having filed a demurrer to the complainants' bill of complaint, and the said demurrer having been duly set down and brought on for argument before the court, and the court having heard Edward K. Jones, Esq., counsel for the plaintiffs, in support of the plaintiffs' complaint, and Arthur v. Briesen, Esq., counsel for the defendant upon the demurrer, and due consideration thereof having been had;

Now, on motion of Messrs. Jones & Govin, solicitors for the complainants, it is

Ordered, that the said demurrer be and the same hereby is in all respects overruled; and it is

Further ordered, that, upon the payment of the complainants' costs in the cause up to the present period, the defendant may, and he is hereby assigned to, answer the complainants' bill of complaint on or before the rule day next succeeding the entry of this order; in default whereof, the bill shall be taken against the said
236 defendant *pro confesso*, and the matter thereof proceeded in and finally decreed accordingly.

W. K. TOWNSEND, *Judge.*

At a stated term of the circuit court of the United States for the southern district of New York, held at the United States court-house and post-office building, in the city of New York, in said district, on the 25th day of March, 1898.

Present: Hon. E. Henry Lacombe, circuit judge.

La Republique Francaise et al., Complainants,
vs.
Louisa Schultz, Executrix, Defendant.

Upon reading and filing the annexed consent, it is

Ordered, that Rowland Cox be, and he is hereby substituted in the place of Messrs. Jones & Govin as solicitor and of counsel for the complainants in the above-entitled cause.

E. HENRY LACOMBE,
U. S. Circuit Judge.

237 United States Circuit Court, Southern District of New York.

LA REPUBLIQUE FRANCAISE ET AL.
vs.
LOUISA SCHULTZ, Executrix, &c.

It is hereby agreed and stipulated by and between counsel for the respective parties in the above-entitled action that, a commission having been issued under an order filed December 20, 1895, to take the testimony of Charles Fere and others in this cause, and the sworn interpreter having failed to translate certain of the answers of the witnesses examined under said commission, and having failed to translate into intelligent English certain other of said answers, and having failed to translate the printed and written exhibits offered in connection with the testimony taken under said commission, Louis Chatel may translate such untranslated exhibits and untranslated and unintelligible answers, and that the translation of the said Chatel may be offered in evidence by complainants and the said Chatel be called as a witness by complainants to testify to his competency as a translator and to the accuracy of his translation.

It is further agreed and stipulated that the said translation and the said testimony of the said Chatel may be used at the final hearing in this cause with like force and effect as if said translation and said testimony had been duly offered before the close of complainants' *prima facie* case, and in every respect as if duly made a part thereof.

And it is further agreed and stipulated that the printing in the original French of the exhibits offered in connection with the testimony taken under the said commission be and the same is hereby dispensed with.

ROWLAND COX,
Solicitor for Complainants.
BRIESEN & KNAUTH,
Solicitors for Defendant.

238 United States Circuit Court, Southern District of New York

LA REPUBLIQUE FRANCAISE ET AL.
vs.
LOUISA SCHULTZ, Executrix.

For the purposes of this case it is agreed by counsel as follows, to wit:

1. That from and after the 31st day of December, 1892, the only labels used by Carl H. Schultz, deceased, in connection with the manufacture and sale of the "vichy" water by him manufactured and sold were as follows:

ARTIFICIAL VICHY
MANUFACTURED FROM DISTILLED WATER BY
CARL H. SCHULTZ.
430-444-1ST AVE. C-P M-S NEW YORK

ARTIFICIAL VICHY
MANUFACTURED FROM PURE DISTILLED WATER BY
CARL H. SCHULTZ.

Potassium Sulphate,	20.404	Ammonium Carbonate,	0.469
Sodium Sulphate,	11.771	Calcium Carbonate,	25.003
Sodium Phosphate,	0.422	Strontium Carbonate,	0.232
Sodium Chloride,	57.878	Magnesium Carbonate,	3.529
Sodium Bromide,	0.013	Iron and Manganese,	traces
Sodium Iodide,	0.003	Alumina,	0.078
Sodium Carbonate,	380.130	Silica,	6.406

One mineral-water glass (6 oz.) contains 13.85 grains of mineral ingredients.

which labels were used by him continuously from the time of their adoption as aforesaid until his death, each siphon of the
239 "vichy" water by him manufactured and sold having attached thereto both of said labels.

It is stipulated and agreed that this stipulation shall have the same force and effect as if the facts therein recited were established by competent testimony.

ROWLAND COX,
Counsel for Complainants.
ANTONIO KNAUTH,
Counsel for Defendant.

a U. S. Circuit Court, Southern District of New York.
In Equity.

La République Française and La Compagnie Fermière de l'Établissement Thermal de Vichy, Complainants,
vs.
Louise Schultz, as Executrix, &c., Defendant.

Defendant's Record.

Briesen & Knauth, solicitors for defendant.
Antonio Knauth, of counsel.

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1 Circuit Court of the United States, Southern District of New York.

La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, Complainants,
vs.
Carl H. Schultz, Defendant.
} In Equity.

The answer of Carl H. Schultz, defendant, to the bill of complaint of La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, complainants.

This defendant, answering said complainants' bill of complaint, says:

First. He denies, on information and belief, each and every allegation contained in paragraphs numbered one to fifteen inclusive of the bill of complaint.

Second. He denies that the complainant La Compagnie Fermiere de l'Etablissement Thermal de Vichy is a corporation duly organized and existing under and by virtue of the laws of the
2 State of France; denies also that the matter in dispute in this suit, exclusive of interests and costs, exceeds the sum or value of $2,000, and denies specifically that the complainants are in any manner whatsoever entitled to the exclusive use of the term "vichy" on mineral water.

Third. Respecting the 16th paragraph of the bill of complaint, this defendant answering, says: That it is not true that at any time he has been manufacturing counterfeit mineral water of any kind, or counterfeit mineral waters in imitation or purported imitation of the mineral waters extracted from one of the said springs, referred to in the bill of complaint called "Grande Grille," or that he is selling or ever has sold counterfeit mineral waters in bottles and other receptacles broadcast throughout the United States as "vichy" waters, and especially as of the aforesaid spring particularly designated "Grande Grille," or that to any counterfeit waters said defendant has ever applied any labels whatsoever, since this defendant has never made any coun-feit mineral waters or dealt in counterfeit goods of any kind whatsoever.

Fourth. This defendant, further answering, says: That he has for more than thirty years last past been in the business of manufacturing artificial mineral waters, and that he has lawfully manufactured and sold in siphons artificial mineral water made according to the analysis of vichy water as given by chemists of recognized authority; that for more than fifty years and before this defendant entered into the manufacture of artificial mineral water, others had manufactured and sold, without restraint, throughout the civilized countries of the world, artificial mineral waters, and amongst them

artificial vichy waters which were sold as vichy waters manufactured according to the same analysis, and that such sale by others prior to the commencement of the manufacture of artificial mineral water by this defendant, and ever since, has been recognized as and is and was lawful, and permitted to be openly and notoriously carried on in this and other countries.

Fifth. And this defendant, further answering the bill of complaint, says: That even in the State of France it has been and still is lawful to manufacture and sell and to sell artificial mineral water of any kind, and artificial vichy water in particular under the name of vichy, and that such right has been particularly recognized in French tribunals, namely, the manufacture of artificial mineral waters and their sale under the name of the natural water according to the analysis of which the artificial water is made.

Sixth. And this defendant, further answering the said bill of complaint, says: That he never has sold artificial vichy water as and for natural vichy water, nor in resemblance thereto, but that all his artificial products are in proper manner labeled and marked so that the purchaser shall know that the goods sold by this defendant are artificial mineral waters made according to certain accepted analyses, the analyses being given on defendant's labels, and in addition the defendant's trade-mark, his name and address, the name of the chemist whose analyses is followed.

Seventh. And this defendant, further answering, says: That his acts in regard to the manufacture and sale of artificial vichy water have been open, honorable and lawful, and in harmony with the universal custom recognized by law as right and proper in all civilized communities, and that this defendant has not done or permitted to be done any act whatsoever that could be construed as injurious to the rights of the complainants, if any they possess.

4 Eighth. This defendant, further answering on information and belief, says: That natural vichy water is being lawfully bottled and sold in France, though not the property of the complainants herein, and that, therefore, the complainants are not exclusively entitled to the use of the term "vichy" on natural mineral waters, apart from the fact that the complainants are not entitled to the exclusive use of the term "vichy" or to any use of the term "vichy" on artificial mineral water.

Ninth. This defendant, further answering, says: That the complainant La Compagnie Fermiere de l'Establissement Thermal de Vichy, in 1877, to wit, on the 7th day of August, 1877, registered in the Patent Office of the United States, as their lawful trade-mark, those parts of the labels used by the complainants on their bottles of natural vichy water which are the property of the said complainants, which registration is known as certificate No. 5014, and to which, for greater certainty, this defendant craves leave to refer; and this defendant shows that by said registration the said complainant La Compagnie Fermiere de l'Etablissement Thermal de Vichy claimed as its trade-mark or property all it had a right to

claim, to wit, the picture of some buildings, and that it cannot, in view of its sworn declaration of exclusive ownership accompanying said registration, be now heard to allege that the Republic of France has any title of ownership in any of said matters so registered or presented for registration.

Tenth. And this defendant further answering, says: That the term "vichy" is being largely used at this time, to the knowledge of the complainants, in connection with natural mineral waters not obtained from or through the complainants, and also on artificial mineral waters of many manufacturers and druggists all over this and other countries, and is lawfully so used and notoriously,
5 and no effort has been made to suppress such use, and that the complainants have at all times admitted the right of these several manufacturers and others to the use of the term "vichy" on such natural and artificial products.

Eleventh. And this defendant, further answering, says that natural mineral waters bottled from springs in and near "Vichy" and imported from France is sold in this country as vichy water to the knowledge of the complainants, and is nevertheless not water to which either of the complainants at any time ever had claim of ownership, and that, therefore, the complainants are not the sole owners of the term "vichy" as applied to mineral waters.

Twelfth. And this defendant, further answering said bill of complaint, says, that the vichy water bottled and sold by the complainants, as alleged in the bill of complaint, is not the mineral water as it comes out of the spring of Vichy, but is tainted and rendered impure by the growth therein of living micro-organisms in appalling numbers, and that the application of the term "vichy" to such tainted water on the part of the complainants is a fraud upon the public and a misrepresentation, whereas the artificial vichy water prepared and bottled by this defendant for over thirty years last past is an aerated liquid charged with carbondioxide and thereby protected against the generation or growth of impurities, and at all times pure, reliable and equal to the dictates of the analysis.

Thirteenth. This defendant, further answering said bill of complaint, says that the artificial vichy water prepared and bottled by him has been for over thirty years last past and now is being put up in bottles known as "siphons" with labels of a distinct and peculiar character differing in all respects from the bottles
6 and labels used by the complainants in connection with their sale of the so-called natural vichy water, and that the distinction between said bottles and labels of the complainants and the siphons and labels of this defendant is so marked and notic-able that the public and those who deal in such waters have never been and cannot be deceived into the belief that the product sold by the one is or may be the product of the other, and that it has always been understood by the trade and the medical profession and the public that the waters sold by this defendant are artificial waters and that the same are known and distinguished by defendant's trade-mark

affixed to the labels that accompany the bottles containing said artificial mineral waters.

Wherefore, and for other good and divers reasons which he craves leave to submit when necessary, this defendant prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

CARL H. SCHULTZ, *Defendant.*

BRIESEN & KNAUTH,
Solicitors for Defendant, 229 *Broadway, N. Y. City.*
ARTHUR v. BRIESEN, *Of Counsel.*

UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, } *ss:*

Carl H. Schultz, being duly sworn, deposes and says: That he is the defendant named in the foregoing answer subscribed by him; that he has read such answer and know- the contents thereof; that the same is true of his own knowledge except as to those
7 matters therein stated to be alleged upon information and belief, and that as to such matters he verily believes it to be true.

CARL H. SCHULTZ.

Subscribed and sworn to before me this 29th day of August, 1893.

HARRY M. TURK,
[SEAL.] *Notary Public, N. Y. County.*

Circuit Court of the United States, Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE de l'Etablissement Thermal de Vichy, Complainants,
against
CARL H. SCHULTZ, Defendant. } In Equity.

The supplemental answer of Carl H. Schultz, the above-named defendant, to the amendments to the complainants' bill of complaint.

This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit or exception which may be had or taken to the manifold errors, uncertainties, imperfections and insufficiencies of the said amendments to the bill of complaint, for answer thereto, or so much thereof as he is advised it is material or necessary to make answer to, answering says:
8 To the allegations inserted by amendment in the fifteenth paragraph of the original bill of complaint, this defendant,

answering, says that he does not know and is not informed, except by the said amendment to the bill of complaint, respecting the same, and therefore denies the same, leaving the complainants to make such proof thereof as they are advised is material or necessary.

To the addition to the sixteenth paragraph of the original bill of complaint, which is contained in the amendment to the bill of complaint, this defendant, answering, says that it is not true that the mineral waters prepared and sold by him are made of deleterious substances, and it is not true that the said mineral waters prepared and sold by this defendant are not made of the true components of the genuine springs of which this defendant's waters are artificial reproductions.

To the allegations contained in the 17th paragraph of the original bill of complaint as amended by the said amendment to the bill, this defendant, answering, says that the same are not true, and he therefore denies the same.

Wherefore, and for other good and divers reasons, which he craves leave to submit when necessary, this defendant prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

CARL H. SCHULTZ, *Defendant.*

BRIESEN & KNAUTH,
Solicitors for Defendants, 229 *Broadway, N. Y. City.*
A. v. BRIESEN, *Of Counsel.*

9 UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*
City and County of New York,

Carl H. Schultz, being duly sworn, deposes and says: That he is the defendant named in the foregoing supplemental answer subscribed by him; that he has read such supplemental answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he verily believes it to be true.

CARL H. SCHULTZ.

Subscribed and sworn to before me this 6th day of February, 1894.

S. B. GOODALE,
Notary Public, N. Y. Co.

[SEAL.]

Circuit Court of the United States, Southern District of New York

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE de l'Etablissement Thermal de Vichy, Complainants,
against
CARL H. SCHULTZ, Defendant.
} In Equity.

The answer of Carl H. Schultz, defendant, to the supplemental bill of complaint of La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy.

10 This defendant, answering said complainants' supplemental bill of complaint, says:

First. He admits that the said complainants, on or about the 23d day of January, 1892, exhibited and filed in this court their certain original bill of complaint, substantially as alleged in the first paragraph of the supplemental bill, excepting, however, that the original bill made no reference in terms to any artificial mineral water made by this defendant, which reference, for the first time, occurs in the first paragraph of said supplemental bill.

Second. He admits that the said bill of complaint, as amended, contained clauses numbered "sixteenth" and "seventeenth" to the same tenor and effect as alleged in the second paragraph of the said supplemental bill of complaint.

Third. He admits that he has, since the filing of the said original bill of complaint, changed the labels in the sixteenth paragraph thereof reproduced, but denies that the said change was made for the reasons stated in the third paragraph of the said supplemental bill of complaint, and denies that the first and also the second labels exhibited in the third paragraph of the said supplemental bill are true and correct representations of the labels used by this defendant, and he alleges that important and material parts of the said labels are omitted from said supplemental bill, and that the parts so omitted are well-known characteristics of defendant's labels and constitute one of the means whereby his products are identified in the trade.

Fourth. He denies the allegations contained in the fourth paragraph of the said supplemental bill of complaint.

And this defendant denies all and all manner of unlawful acts wherewith he is by the said supplemental bill charged. All
11 which matters and things this defendant is ready and willing to prove as this honorable court shall direct, and he humbly prays, as he has already prayed, to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

CARL H. SCHULTZ, *Defendant.*

BRIESEN & KNAUTH,
Solicitors for Defendant, 229 Broadway, New York, N. Y.

ARTHUR v. BRIESEN, *Of Counsel.*

UNITED STATES OF AMERICA,
City of Greenbone Springs, County of Clay, } *ss:*
State of Florida,

Carl H. Schultz, being duly sworn, deposes and says: That he is the defendant named in the foregoing answer subscribed by him; that he has read such answer and knows the contents thereof; that the same is true of his knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to such matters he verily believes it to be true.

CARL H. SCHULTZ.

Subscribed and sworn to before me this 12th day of March, 1894.
[SEAL.] C. FABIAN LAW,
Notary Public, State at Large.

12 Circuit Court of the United States for the Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE de l'Etablissement Thermal de Vichy, Complainant-,
vs.
LOUISE SCHULTZ, as Executrix of the Last Will and Testament of Carl H. Schultz, Deceased, Defendant. } In Equity.

Testimony taken on behalf of the defendant before F. M. Adams, a standing examiner of this court, at the office of Briesen & Knauth, defendant's solicitors, No. 229 Broadway, New York city, on the 17th day of December, 1897.

Appearances.

For complainant—Edward K. Jones, Esq.
For defendant—Antonio Knauth, Esq.

HERMAN ENDEMANN, a witness called on behalf of defendant, having first been duly sworn, testifies as follows:

Direct examination by MR. KNAUTH:

1 Q. Please state your name, age, residence and occupation?

A. My name is Herman Endemann; I am 55 years old; I live at 410 Greene avenue, Brooklyn; I am a chemist by profession, with a chemical laboratory at No. 23 William street, New York.

13 2 Q. State what experience you have had as a chemist?

A. After passing my examination for the purpose of becoming a doctor of philosophy, I was assistant professor at the Polytechnic in Stuttgart, for three years. I was then for two years with Professor Chandler at the School of Mines, Columbia college, New York. I then became connected with the health department as chemist, until the year 1880, when I resigned from that position to

take hold entirely of my private business which I had established some time previous in the lower part of the city of New York, as a consulting and analytical chemist. While I was in Stuttgart I participated in making a series of analyses of the waters of the State of Wurtemberg. While I was connected with the health department and with Professor Chandler I made at one time almost weekly examinations of the water supply of the city of New York and Brooklyn, and various private wells; and since I am established for myself the examination of waters for sanitary purposes, as well as mineral waters, belongs to the regular work of my chemical laboratory.

3 Q. Are you a German by birth?

A. I am a German by birth.

4 Q. How long have you lived in Germany?

A. Twenty-five years.

5 Q. And the rest of the time in this country?

A. In the last thirty years I have lived in New York and Brooklyn.

6 Q. Are you acquainted with the business of the deceased, Carl H. Schultz, who was defendant in this case until his death?

A. I have known Mr. Schultz since the year 1868, and from that time on I have met him quite frequently, socially and in business matters, and have been on various occasions at his establishment. I also have been employed by him professionally on various occasions.

14 7 Q. Did you ever make any analysis of the vichy water of Carl H. Schultz, sold by him in his business during his lifetime?

A. I have.

8 Q. In what year?

A. In the year 1888, I was commissioned by a gentleman by the name of Mr. Haynes to make examinations of the artificial vichy waters as they were sold here in the city of New York. Amongst the waters that I examined was also the water of Mr. Schultz, and Mr. Schultz's water was found to be the only one which was composed in accordance with the analysis of the Grande Grille water, as given by Bauer.

9 Q. Who is Bauer?

A. Bauer has been an assistant of Struve, who introduced the rational manufacture of artificial mineral waters at first in Germany in the year 1823. Bauer was connected with Struve, as an assistant and collaborator, between the years 1830 and 1840, perhaps longer; he may have been connected up to his death, so far as I know. I do not know. He is well known throughout Germany, and in the scientific world generally, as a very accurate worker, and the analyses which he has made are looked upon as standard analyses.

10 Q. Have you been connected with the industry of making artificial waters in Germany and other parts of Europe, and if so, state what acquaintance with this industry you have?

A. The artificial mineral-water industry in Germany is, as far as the practice is concerned, unknown to me except through publication- of a scientific and technical character.

11 Q. How is it in other countries; have you any acquaintance there?

A. In this country I have more practical acquaintance on account of being connected with a number of establishments and having been consulted by them with regard to the manufacture of artificial waters.

15 12 Q. Are you acquainted with the scientific literature relating to the manufacture of artificial mineral waters in Europe?

A. I am, to a certain extent.

13 Q. Can you refer us to those works in which the history and development of this industry of making artificial waters in Europe is laid down, or to some of them.

Objected to as immaterial, irrelevant and inadmissible under the issues in this case.

A. I have here, in the first place, vol. 3 of the Verhandlungen des Vereins zur Befoerderung des Gewerbfleiszes in Preuszen, published in the year 1824. Translated: Proceedings of the Society for the Advancement of Industries in Prussia.

Die Künstlichen Mineralwasser in ihrem Verhältnisse zu den natürlichen, by Dr. Hertz, published in Berlin in 1830. Translated: The Artificial Mineral Waters in their Relation to the Natural Waters.

Ueber den Gebrauch und die Wirkungen der Künstlichen und Natürlichen Mineralbrunnen, by Dr. August Vetter, published in Berlin, 1835. Translated: On the Use and Effects of Artificial and Natural Mineral Springs.

Allgemeines Brunnen-und Badebuch, by Dr. August Vetter, published in Berlin, 1840. Translated: General Treatise on Springs and Bathing.

Annalen der Struve'schen Brunnenanstalten, by Dr. A. Vetter, published in Berlin, 1841. Translated: Annals of Struve's Mineral Water Establishments.

Another book, same title, and same author published in 1842.

Another book, same title and same author, published in 1843.

Die Struve'schen Mineralwasser-Anstalten, published in Leipsic, in 1853. Translated: Struve's Mineral Water Establishments.

Die Entbehrlichkeit der Naturlichen Mineralquellen und deren einfache Ersatzmittel, by Dr. Ph. Jochheim, published in
16 Mainz, 1861. Translated: Natural Mineral Springs. How they can be dispensed with and replaced in a simple manner.

Zur Jubelfeier der Struve'schen Mineralwasser-Anstalten, by Prof. Dr. Hermann Eberhard Richter, published in Dresden, 1871. Translated: Jubilee of Struve's Mineral Water Establishments.

Dr. Struve's Künstliche Mineralwasser, by Dr. H. Ploss. Leipsic, 1881. Translated: Dr. Struve's Artificial Mineral Waters, on the Sixtieth Year Jubilee of the first establishment at Dresden.

Die Struve'schen Mineralwasser zur Fünfundzwanzigjährigen Jubelfeierder Leipsiger Anstalt von Dr. med. Robert Flechsig, Leipsic, 1886. Translated: Struve's Mineral Waters, for the Twenty-fifth Jubilee of the Leipsic Establishment, by Doctor of Medicine Robert Flechsig.

Counsel for defendant offers in evidence the books testified to by the witness in the foregoing answer and the same are marked in the order in which they have been produced and testified to, Defendant's Exhibits Nos. 1 to 12, of this date.

Objected to by complainants' counsel as incompetent, irrelevant and inadmissible.

14 Q. Since when has the reproduction of natural mineral waters been undertaken and known as a scientific and practical fact?

Complainants' counsel objects to the question as too vague and indefinite, no foundation having been laid showing the extent to which this witness has personal knowledge of the facts inquired of.

A. Struve opened his first establishment in the year 1823 in Dresden, though previous to this time he had almost for ten years experimented and worked on a smaller scale; and it is from the year 1823 that we date the birth of the manufacture of artificial mineral waters on a scientific scale. Not all mineral waters were at that time represented, but the establishments under the guidance of Struve, and with the aid of scientific investigation and analyses of natural springs, added from time to time to the scope of the manufacture, which has finally developed to such an extent that there is hardly any water which cannot be imitated after it has been analyzed.

17

15 Q. Is it your opinion, based upon your experience and scientific knowledge, that the water of natural mineral springs can be reproduced artificially?

Objected to as incompetent and furthermore upon the ground that the witness has not testified to having any scientific knowledge on the therapeutic qualities of mineral water.

Defendant's counsel replies that the question does not call for any opinion upon the therapeutic qualities of the water, but simply for the identity.

A. From the fact that an analysis of a natural water and an analysis of a scientifically imitated artificial water gives exactly the same results, it is proven that chemically no difference exists between the artificial and the natural waters.

16 Q. Have you read the deposition of Edward Bougeau, a witness called on behalf of the complainants in this case, and do you understand the same?

A. I have read and I think I understand the same.

17 Q. The witness Bougeau states in answer to the tenth direct question put to him, as follows:

"In the report of the Commission of the Pharmaceutical Society of Paris, Messrs. Chatin, Poggiale and Lefort say: 'It is impossible to attain even very approximately the synthesis of natural mineral waters.' The only apparent exception which may be quoted, of the waters called seidlitz and seltzer it is unnecessary to take into consideration."

18 Q. What have you to say to that testimony?

A. It is possible that the Commission of the Pharmaceutical Society of Paris may have made such a statement, but if the question is whether I coincide with the views therein given, I must say that chemists generally accept the fact that the synthesis of the natural mineral waters is possible and is carried out. Why there should be any exceptions made nobody can see from the testimony, at least not in the portion of it which has been read to me.

18 Q. Can you refer us to any standard scientific works in which the views which you have here expressed upon this question are contained?

A. I have here in my hand one volume of the Handwörterbuch der reinen und angewandten Chemie, von Liebig, Poggendorff and Woehler; Funfter Band, Brunswick, 1851. Translated: Hand Dictionary of Pure and Applied Chemistry by Liebig, Poggendorff and Woehler. I have translated from page 321 of this book an extract which I herewith produce.

Defendant's counsel offers in evidence the book referred to and the same is marked Defendant's Exhibit No. 13 of this date.

Defendant's counsel offers in evidence the translation referred to from page 321, and the same is marked Defendant's Exhibit No. 14 of this date.

Objected to as incompetent, irrelevant and inadmissible.

19 Q. State what the character of the book is to which you have referred here?

A. The reputation of the book is of the highest. It has been published, and the names of the publishers show for themselves, by men who stood at the head of science and are recognized by all chemists as such.

20 Q. Is the view expressed in this extract which has been produced by you still regarded as a scientific truth now-a-days?

19 A. It is.

21 Q. It has been stated by witnesses for the complainant in this case that the reproduction of natural mineral waters is impossible by reason of the existence of organic substances in the same; what have you to say to that?

A. The organic substances found in mineral waters, especially in bottled mineral waters, are generally such as have been derived from dust, dirt, impure corks and impure bottles, and the organic portion in a great many of the mineral waters is accidental and therefore has got nothing to do with the composition of the water. Of course there are some exceptions. In some cases waters with a

shallow origin contain frequently organic material, as germs, and so on. If I may be permitted to refer to the testimony of Mr. Bougeau, there is no statement made by him that there is any specific organic material in the vichy waters; and also the analysis which is produced by him and by other authorities is entirely silent with regard to the presence of organic material.

22 Q. Have you any acquaintance with the manufacture and sale of artificial vichy water in this country, and if so state what?

A. I have been connected and am connected with several establishments which manufacture vichy water. I have prepared prescriptions for such manufacture based upon certain analyses, and I have analyzed such waters for the purpose of establishing that these waters were actually identical with the original water. If a man is honestly willing to produce an artificial water which shall be equal in its composition to the natural, chemistry gives him all the means to do so. In a great many cases, however, it is necessary to educate practical men very thoroughly in the manipulations which are necessary in order to produce the best results, and such has been part of my business for a number of years.

20 23 Q. How long have you known of the manufacture and sale of artificial vichy water here in this country?

Objected to as irrelevant, inadmissible aad incompetent.

A. My personal knowledge goes back as far as the year 1867.

24 Q. Who manufactured artificial vichy water then, in 1867?

Same objection.

A. Carl H. Schultz, Dr. Hanbury Smith and John Matthews.

25 Q. Here in the city of New York?

A. In the city of New York.

26 Q. How was this water which they manufactured and sold known among the public?

Objected to as incompetent, irrelevant and inadmissible, and furthermore on the ground that the witness has not testified to or shown any knowledge of how the waters were known to the public.

A. It was known as vichy water.

27 Q. Do you know what name appeared on the labels under which it was sold?

Same objection.

A. As a general thing the name of the manufacturer aside of the name of the water. The water was sold at that time in siphons, but there was also a great deal of water sold directly from the soda fountains.

28 Q. Did you drink it from such soda fountains?

Same objection.

A. Certainly, it was there for that purpose.

29 Q. How did you call for it?

Same objection.

A. I called for vichy water.

21 30 Q. And when calling for vichy, what did you expect to get?

Same objection.

A. I expected to get a very alkaline water, fit for neutralizing the acidity of my stomach, which in the first years of my arrival here in New York needed neutralization very frequently.

31 Q. Did you expect to get a natural spring water or an artificial water?

Objected to as leading and as incompetent, irrelevant and inadmissible.

A. I expected to get an artificial water.

32 Q. How do you know what you got when asking in this manner for vichy, whether a natural or artificial water?

A. I knew that vichy water was manufactured here. I knew that in a great many cases the manufacturer had put his name upon the label and was known to me to be a manufacturer; and I have been entirely unaware until this year that natural vichy water was imported into this country. The first bottles of natural vichy which I have seen were obtained by me during the month of October, 1897.

33 Q. Do you mean that previous to the year 1897 you never saw a bottle of natural vichy water here in this country?

A. That is so; I never saw a bottle of natural vichy water in this country before that time.

By Mr. JONES:

34 X Q. Never had any knowledge that it was imported here?

A. Never had any knowledge that it was imported.

By Mr. KNAUTH:

35 Q. Has the manufacture and sale of artificial vichy water under the name of vichy been continued after 1867, to your knowledge, in this city?

22 A. It has been continued without intermission up to the present time.

36 Q. Is artificial vichy water, under the name of vichy, consumed publicly and to any considerable degree, or only in a slight measure, if you know?

A. It is used here in this city and throughout the United States to a very considerable degree. It is not only kept in drug stores, but it is kept as a regular drink in nearly all bar-rooms.

37 Q. Can you refer us to any works, I mean scientific works, in which recipes for making artificial water are contained?

Objected to as irrelevant, incompetent and inadmissible.

A. I have here "Encyclopædia of Practical Receipts and Processes," by William B. Dick, New York, entered in the office of the Librarian of Congress at Washington, D. C., by Dick & Fitzgerald, in 1872. On page 413 of this work three receipts are given for the manufacture of vichy water.

Defendant's counsel offers in evidence the book produced by the witness, and the same is marked Defendant's Exhibit No. 15 of this date.

Objected to as incompetent, irrelevant and inadmissible.

38 Q. Are you acquainted with any natural mineral water which employs the name vichy in this country?

Objected to as irrelevant, incompetent and inadmissible.

A. Among the Saratoga springs of the State of New York, the most alkaline water, that is, the water which contains the largest amount of bicarbonate of soda, has, on account of this fact, been called Saratoga vichy, in accordance with the ordinary understanding that vichy water means a very alkaline water.

23 39 Q. Do you know whether the water of that spring is bottled and sold in the markets?

A. It is bottled and sold.

40 Q. Is this a bottle of it (showing witness a bottle)?

A. Yes, this is one bottle of it; the contents of which has been examined for the purpose of ascertaining that it really contained a considerable amount of bicarbonate of soda.

Defendant's counsel offers in evidence the bottle produced by the witness, and the same is marked Defendant's Exhibit No. 16 of this date.

Objected to as irrelevant and inadmissible.

41 Q. Do you know how long the waters of this Saratoga vichy spring have been bottled and sold in the market here?

A. In the year 1871 or 1872 this water was first analyzed and its nature determined, and the spring has kept its name ever since.

(Recess.)

42 Q. Have you made any analysis of the artificial vichy water coming from the establishment of Carl H. Schultz, within recent times; if so, please state when and under what circumstances?

A. I made in all three purchases of Schultz's mineral waters but not at any time from the firm itself. The first consisted of a siphon of mineral water bought in the neighborhood of my office, in a store, not a drug store; the second came from a restaurant; and later on, about three weeks afterwards, I bought a whole box, also from a restaurant, the same restaurant from which the second sample which I had examined previously came.

43 Q. Were these siphons or bottles?

A. They were siphons.

24 44 Q. What label did they bear? Will you please read what was stated on the label?

A. "Vichy manufactured from distilled water. Carl H. Schultz, 430–440 First avenue, C. P. M. S. (trade-mark) New York." That is the inscription of one of the labels at the top of the siphon, while on the other it says, "Vichy composed after Bauer's analysis," giving the ingredients of it.

Counsel for complainant calls for the production and identification of the bottle, or siphon.

Defendant's counsel offers the siphon testified to by the witness in evidence, and the same is marked Defendant's Exhibit 17 of this date.

45 Q. Did the other siphons which you purchased bear similar labels?

A. Identical labels.

46 Q. Please state what analyses you made concerning this water?

A. I made an analysis for the purpose of determining in how far this water differed from the natural water as analyzed by Bauer, and also from the water alleged to be Carl H. Schultz' water, analyzed by Mr. Bougeau. The result of the examination was that the water is practically identical with the water analyzed by Bauer, but is in its composition entirely different from the alleged vichy examined by Mr. Bougeau. The main difference consists in the fact that Mr. Bougeau found a far larger quantity of sulphuric acid than either Bauer found or Schultz has in his water; and that the alkalinity calculated as carbonate of soda agrees with Bauer and is also different from Bougeau, who gives it too high. The further statement of Bougeau, that the water prepared by Schultz is free from carbonates of lime and magnesia is wrong. I find the quantities of lime and magnesia substantially as would agree with the analysis of Bauer. I have also examined the water with regard to its contents of salt, and found it there just about the

25 same. I find that the potash differs essentially from the statement of Bougeau and agrees substantially with Bauer. Bougeau claims to have found no potash whatever, while I find the amount of potash in the water to be the same as should be present according to the analysis of Bauer, but different from the quantity which should be present according to the analysis of Willm. I have examined the water likewise for bacteria, and I find that the water is free from bacteria, which is in accordance with a great many of my previous observations, that water which is bottled with a large excess, under pressure, of carbonic acid gas, cannot contain any living bacteria—a fact which has also been stated by various other authors.

47 Q. Have you also made any analyses of natural vichy waters as they are sold in this market, and if so, will you please first state what such analyses you have made?

A. I have examined the water from St. Yorre, from the Regnier spring, also the Hauterieve, Globe spring. I have examined a number of samples of Grande Grille, Celestin and Hopital. The samples of the Grande Grille were examined from 1890 and 1897 bottlings; and Celestin from 1892 and 1897 bottlings, according to the stamp on the tin capsule over the cork. These were all the varieties of waters, of vichy, which I was able to obtain in this market. About one dozen other varieties ordered could not be obtained.

48 Q. Have you the bottles here, which contained these natural vichy waters which you have analysed as aforesaid?

A. I have specimens here of each. I have analyzed a good many more.

Defendant's counsel offers in evidence seven bottles produced by the witness, and they are marked respectively Defendant's Exhibits 18 to 24 of this date.

26 49 Q. Please state what analyses you made of these natural vichy waters purchased by you and what the results of the analyses as compared with your analysis of Schultz' artificial vichy water are?

A. In the case of Schultz' artificial mineral water, I have stated already that it was substantially the same as the water should be composed if it was compounded according to the analysis of Bauer. The Grande Grille waters which I examined differ amongst themselves; the various bottles examined differ. The Grande Grille of 1890 gave substantially the same residue as the latest purchase of Grande Grille, 1897; but one bottle of Grande Grille, 1897, contained considerably more total solids. It was the only one in stock of one of the agents employed, to which I had been referred by the company on whom I called at the time when I wanted to make my purchases.

By Mr. JONES:

50 X Q. What company?

A. In the St. Paul building.

By Mr. KNAUTH:

51 Q. You mean the agent of the vichy company.

A. The agent of the vichy company, yes. The Grande Grille waters are generally of one and the same character, though there are certainly considerable differences in some of the bottles; but if we compare the Grande Grille waters with the waters of the Celestin, we find that the water of the Celestin contains only about two-thirds of the amount of carbonate of soda which is contained in the water of Grande Grille. Also the water of Celestin in 1892 was very much weaker in alkalinity than the water of 1897. It was also found that in some of the bottles quite a considerable amount of the carbonate of lime had been deposited on the sides of the bottles and was not any more in solution, which

was evident from the fact that by treatment of the
27 bottle with an acid a certain amount of lime could be loosened from the inside of the bottle, which may have been already originally in the water or may also in part represent some impurity. In the matter of chlorine, the quantity of chlorine found in the Celestin is just about five-sevenths of the quantity which is found in the Grande Grille water and in Schultz' water. The Hauterieve Globe contains a little more chlorine than the Celestin, and so does the Regnier. A remarkable fact was found, namely, that these waters contain very frequently nitrous acid, a substance which is not mentioned in any of the analyses given by any of the authors. Another remarkable fact, that these waters, especially those which possess less solids, contain a considerable amount of nitric acid. The nitric acid determined in one sample of Celestin quantitatively amounted to 3.5521 parts of nitric acid in 100,000 parts. If the waters were evaporated they always gave a yellow residue, which, however, did not astonish me, for the reason that I had found in some previous examinations that nearly all bottled waters give a yellow residue, due to impurities taken from the cork. The only water which did not give any color when it was concentrated was Schultz' vichy, while all the others showed color. I likewise examined the waters for microbes, and I found in the Regnier water 116,700 microbes in one cubic centimeter; 2.160 in the Hauterieve Globe; 200 in the old sample of Grande Grille, for the year 1890; 6.060 in the new sample of Grande Grille; 790 in the new sample of Celestin; none in the old sample of Celestin, and none in Schultz'. It is to my mind perfectly clear that those waters which contain nitrous or nitric acid, especially, are vastly contaminated with surface sewage. Why this fact has never been brought out by any of the analyses which have so far been published by the French government, I do not know.

28 52 Q. Are the bottled waters of the Regnier and Hauterieve Globe springs commonly known as vichy waters in this market?

A. I have asked for vichy water at the place where I bought them, and they were given to me as vichy waters: and likewise they have got the name of vichy displayed upon the bottle, on the label: "du basin de vichy."

53 Q. Are these springs grouped scientifically among the vichy springs?

A. I have always seen them so grouped, in old publications and in new publications. They were so grouped by Bouquet and they were so grouped in the book "Les Eaux Minerales de la France," by Jacquot and Willm (Paris, 1894), referred to by Mr. Bougeau.

54 Q. Have you prepared a statement or table which shows the results of the comparative analyses to which you have just testified, which you can produce?

A. I have.

The witness produces a statement.

Defendant's counsel offers in evidence, for convenience of reference, the tabular statement produced by the witness, and the same is marked Defendant's Exhibit 25 of this date.

Objected to as irrelevant, inadmissible and incompetent.

55 Q. I notice that the amount of total solids remaining after an evaporation of the Regnier and Hauterieve waters, and also of the Celestin specimens, is much less than the total solids left by evaporation of the Grande Grille, Hopital and Schultz's artificial vichy; how do you account for this difference?

A. The waters mentioned do not only possess a smaller amount of solids than the other waters mentioned, but if you speak of the natural ones they are waters which come out of the earth at
29 a lower temperature. The temperature of the Grande Grille water is, for instance, about, variously stated, from 38¾ to 42¾ centigrade; while some of the others leave the earth at a temperature between 14 and 16 centigrade. It is for those two reasons combined that I consider only those waters which possess the highest temperature and also the largest amount of solids and the greatest alkalinity, as such waters which have an undoubted deep subterranean source while the others have got two sources, a deep subterranean source and surface or sewage water, rain water which, when it passes through pure soil will not of course materially influence the composition of the water, except as to strength, but if it passes through soil saturated perhaps by excrement, will carry this surface sewage into the water. That such is the case I have shown directly by the fact that the Celestin water contains 3.5521 parts of anhydrous nitrous acid in 100,000 parts, which is more than the board of health in this city allows in any well which is to be used by the inhabitants of this city. Any well containing nitrous acid is closed at once; and at certain times of the year, during the summer, the presence of nitrous acid, even in Croton water, though in exceedingly small quantities, has been found and is greatly dreaded by sanitarians.

56 Q. Is this Celestin water sold by the vichy company here, or publicly advertised by it in the daily papers?

A. Yes, the Celestin water is the only one I believe which is at the present time pushed by the company and advertised in the daily papers, and I think also on some of the railroads. It is even the water that you get, if the man from whom you buy does not believe that you know the difference. I ordered Grande Grille and received Celestin from the agent whom I was referred to by the agent of the vichy company. I had to give a special order and call their attention to the oversight, and then ascertained that they had only one bottle of Grande Grille in the house, and that one
30 bottle of Grande Grille in the house was sent to me, and the rest of it several days later.

57 Q. I notice that you found the total solids of Schultz's artificial vichy to be 507.70 and the total solids of Grande Grille 512 in one instance, 525 in another instance, 511 in a third instance, 507 in

a fourth instance and 510 in a fifth instance. How do you account for the different results obtained by you in measuring the same Grande Grille water in different instances?

A. In some cases it is in my opinion due to a change in the composition of the water at the spring, while in other instances it may be due only to impurities in the bottles, and probably in the bottle interchanging constituents with the water. Glass, especially new glass, is a substance which always gives up to water more or less of its constituents; consequently bottled water will never give an absolutely identical result every time, if you examine the water from different bottles.

58 Q. How does the analysis of Schultz's artificial vichy which you recently have made compare with the analysis of that water which you made in the year 1888, as previously testified to by you?

A. It is practically the same.

59 Q. What do you mean by the expression "transient hardness" in the third column of your comparative table?

A. This column was introduced in the series of examinations for the reason that I intended to ascertain whether these waters really, as well as the Schultz water, contained carbonate of lime or not. If I say "transient hardness, as carbonate of lime," I mean thereby that all the salts which behaved as carbonate of lime and which can be removed from the water simply by boiling, are calculated together as carbonate of lime without making any special distinction between carbonates of lime and magnesia by a process conversant to all chemists. I found this test necessary, especially in the
31 case of the Schultz water, because Bougeau has stated that Mr. Schultz's water was entirely free from magnesia.

60 Q. I notice that in the column headed "Nitrous acid" you find no such acid in Schultz's water, traces of it in some of the specimens of natural vichy analyzed by you, and considerable quantities in a specimen of Celestin, 1897, and a specimen of Grande Grille, 1897. How do you account for the presence of a considerable quantity of nitrous acid in a specimen of Grande Grille, which I understand issues from the earth at a comparatively high temperature?

A. The nitrous acid need not be in the water at the time when it issues from the earth, but the nitrous acid will form under the influence of the bacteria which live in the water, and which are the cause of a reduction of nitric acid to nitrous acid or an intermediate product of oxidation, of ammonia to nitric acid. It is always considered as an evidence of considerable bacterial activity. I believe, therefore, that the presence of these larger quantities is simply due to this fact. It has been ascertained already by the examination of one sample of Grande Grille 1897, that there were 6,060 microbes in one cubic centimeter of the water. But the water which I have examined there and which contained such a large amount may have contained a still larger quantity of nitrous acid. I cannot say so for certain, for the reason that the test with this

bottle was not made. All Grande Grille water contains more or less ammonia; and I have found no Grande Grille water absolutely free from nitric acid; so the possibility of an intermediate product forming by the bacterial life was not excluded. What I have given here as my qualitative nitric acid test is one of the coarsest that can be made, that is, a test which will not indicate very small quantities; and for this reason it is in some cases stated that there is only very faint reaction, which, of course, means but very faint reaction by this test. If we take a more accurate and finer test, like the phenylenediamine test, we find nitric acid in every one of
32 those waters; which means that really none of those waters are absolutely free from sewage.

61 Q. Please turn to the column headed "Color of concentrated solution," and state what the colors thereunder stated mean from a chemical point of view?

A. They mean in all these cases the presence of colored organic material, which we always find in alkaline waters bottled in bottles closed with cork stoppers.

62 Q. Then, as I understand you, the fact that one specimen of the Celestin 1897 shows only a slight coloring, would go to show that this specimen contained only slight quantities of organic substances?

A. Of such organic substances as would color, in this case, it is true. Of course there are a great many organic substances which do not possess any color. It is, in my opinion, not so highly charged with cork extracts as the others, and probably on account of the fact that it was perhaps a more recent bottling.

63 Q. Are the corks of such bottles frequently the seats of bacteria?

A. Certainly.

64 Q. Please look at the comparative table offered in evidence by complainant's witness Bougeau and state what you have to say with reference to the analysis made by him of a specimen of Schultz's artificial vichy, and the comparison of that analysis with that of Bauer, and on the other hand with that of Willm?

A. Bougeau claims that he found no sulphate of potassium in Schultz & Co.'s water, while according to Bauer there ought to be 204.40 parts of sulphate of potassium in the water. Willm states that there is no sulphate of potassium in the water, but he claims that the water contains carbonate of potash. This statement on the part of Bougeau is rather peculiar, in so far as every chemist knows that it is entirely a matter of personal opinion whether the potassium is considered to be combined with carbonic acid or
33 sulphuric acid. One chemist may have one way of calculating his analysis and another chemist may have another. Bauer in calculating his analysis followed the ordinary rule that had been laid down by the authorities. Willm is evidently an authority to himself, because he has not followed that rule; and Bougeau has followed Willm. If we take two salts and bring those

two salts in a water solution, we have not those two salts in a solution any more but the constituents of one salt exchange in part with the constituents of the other salt; hence we may have four salts in solution. It is for this reason that if any one states that a person has carbonate of potash in a solution, while another states that he has got sulphate of potash in solution, we look upon such manners of calculating the results of an analysis simply as a personal whim of a party adopting one way or another. We are really unable to tell in any of those cases whether carbonate of potash or sulphate of potash is in solution, if other salts are present; and chemists have founded, therefore, rules by which the calculation and the distribution of the acids and bases is to be made. But Bougeau has found no potash at all. While, therefore, between the analysis of Bauer and the analysis of Willm simply a theoretical speculation is the difference between the two analyses, in the analyses of Schultz water by Bougeau, according to my experience, an error must have been made, or Bougeau did not have the genuine Schultz water, for Schultz's water always contains the requisite quantity of potassium. This lack of the presence of some of the constituents is made up by the excess of others. For instance, Bougeau finds far more sulphuric acid in Schultz's water than either Willm or Bauer found in the natural waters; and the same holds true also for the carbonate of soda. In this way, by neglecting or not finding some substances, the whole total solids are exactly the same as they ought to be according to the analysis of Bauer.

65 Q. Did you find such an amount of sulphuric acid in
34 Schultz's water analyzed by you as is claimed by Bougeau in his analysis?

A. I did not. I found in Schultz's water 14.556, while Bougeau found 17.56 in 100,000 parts; and Willm in the Grande Grille 15.73, and Bauer in the same water 16.03.

66 Q. I notice that Bauer in his analysis finds 64.06 parts of silicic acid in the water and Willm 65.2 parts in one million parts; while Bougeau finds no silicic acid in the alleged Schultz's water analyzed by him. What did you find of silicic acid in the water analyzed by you?

A. I found that the Schultz water contained silicic acid, though not quite so much as the analysis states, but pretty nearly so.

67 Q. Bougeau testifies that he found in the Schultz water analyzed by him a large number of bacteria. How does that compare with your investigation of that water?

A. I was unable to find any bacteria in Schultz's water; and I state that it is only in keeping with all the other investigations which I have made in this respect, namely, that highly carbonated waters will be, especially after some time, entirely free from bacteria.

68 Q. Can you assign any reason which may lead to such different results in making bacteriological investigation of a mineral water, and in the one case finding a number of bacteria and in the other finding none, assuming that the water was the same?

A. The only reason which I can see is that the manipulation has differed. Carelessness is always able to produce as a result that you find a considerable amount of bacteria, while exceeding care will generally exclude them. The process is simply the following: You take a solution which is very thoroughly sterilized; we generally take about three dozen tubes at a time, all sealed with cotton and capped; and they are heated for three days in succession every day for about half an hour to destroy the bacteria which may
35 be in the solution at the time it was prepared and to destroy subsequently developed bacteria which have escaped the first boiling. After the third heating we generally expect the tubes to be free. We then charge the tubes with a small quantity of the water, which is measured with a very fine pipette. The whole is mixed in a tube. Then it is put on a sterilized plate and put in a sterilized chamber. Of course, the pouring out of the solution upon the sterilized plate will bring it for just a short period in contact with the air. A breath of dust may be the cause that everything is changed, especially if one works in the summer time, when the air is naturally more charged with bacteria than at any other time. The reason, therefore, may simply lie in the fact of an accidental admixture of impure material, either in the shape of dust or something else. For that reason, as a general thing, we do not consider ourselves satisfied with one single examination; we very frequently make them double; especially if we do find bacteria we make them double, so as to be sure. But in this special case the work was done in a room where the walls and floors and ceiling had just been painted anew, and there was no dust, and the conditions were the very best for making the tests.

Adjourned to Monday, December 20, 1897, at 11 a. m.

NEW YORK, *December* 20, 1897.

Met pursuant to adjournment.
Present: Same counsel as before.

HERMANN ENDEMANN further examined by Mr. KNAUTH:

69 Q. Please state how a chemical analysis of a mineral water is made. I mean what you seek to determine in the first place in making an analysis?
36 A. In making an analysis of mineral waters we determine the amount of the bases, such as potassa, soda, lime, magnesia, and lithia, for instance; and on the other hand we determine the amount of the various acids which are present in the water, like carbonic acid, sulphuric acid, hydrochloric acid, nitric acid, and so on. We do not, however, determine that the water contains so much sulphate of potash or so much carbonate of potash, or so much sulphate of lime, or so much nitrate of lime, or so much chloride of sodium or chloride of potassium. These substances are found and determined simply by calculation, by commencing, for instance,

with one base, which we combine say with sulphuric acid. If any of this base is left which cannot combine with the sulphuric acid, we then calculate the amount of another acid which may combine with this rest and which has been found to be present in sufficient quantity. So if a complete mineral-water analysis, in the ordinary style in which it is presented to the medical man, or to the public generally, states that certain salts are present, it must be taken with a certain amount of allowance in so far as they are only present according to the calculations of the man who presents the analysis. The same analysis and absolutely same results may be calculated in an entirely different fashion, so that the results of the same analysis put side by side and calculated according to one fashion or the other fashion may appear to be from waters of an entirely different nature.

70 Q. In answer to the eleventh question put to the complainants' witness Edward Bougeau, this witness says, about that sample of Schultz's water analyzed by him, "It appears to differ from it (the natural) remarkably by the absence of certain parts, such as arseniate of soda, carbonate of potassium, carbonate of lithium, boric acid subsidium," &c., &c. What have you to say about this statement?

A. Arseniate of soda is not contained in Schultz's water, for
37 the reason that Bauer has not found any arsenic in the water.

The quantity of arsenic which has been found and has been calculated in the analysis is less than one part of arseniate of sodium in one million parts of water. The arseniate of sodium, however, contains considerably more oxygen than the poisonous arsenious acid, and also quite a large amount of sodium, so that really the arsenic will dwindle down to much less than half a part of arsenic in one million parts of water. Considering that the doses of arsenic as they are given by physicians are considerably larger than this portion here, and perhaps also the fact that the water does not always contain arsenic, I should think that it does not play any part in the therapeutical properties of the water, though of course I am not an expert on those questions, being a chemist and not a physician, and only being conversant with the doses of the substances. The same may be said perhaps of the carbonate of lithium which is present, which is exceedingly small, being nineteen parts in one million, which is considerably smaller than the amount of nitric acid found, for instance, in Celestin, and which has never been mentioned in any of the analyses. The boric acid subsidium naturally does not belong to the water itself. If it is a subsidium it must be considered as an impurity in the water, that is, a substance which has coated the bottles, which is not in the clear water but is a subsidium, which is an insoluble substance found in the water and not belonging to the water proper. As far as the carbonate of potassium is concerned, upon which very great stress has been laid by Bougeau, I should say that I have pointed out that question before and stated that it is simply a matter of calculation, that is, whether you consider the substance to be present as sulphate of potassium or

carbonate of potassium. Sulphate of potassium should be present according to the analysis of Bauer, and is present according to my own analysis of Schultz's water. So the statement with regard to the carbonate of potassium falls of itself. The quantity of
38 lithia in that water is really so small that a person taking the water regularly for about four weeks would receive one-fifth of a grain of carbonate of lithia, which is less than one-tenth of a grain of lithia, and is really a quantity which very likely is made up in a great many other cases by the lithia being contained in small quantities in ordinary substances of diet.

71 Q. In the comparative analysis which the witness Edward Bougeau has presented in Exhibit Tableau 1, and to which he refers, he does not find any free carbonic acid in the Schultz water analyzed by him. Did you find such free carbonic acid to be present?

A. I find that Schultz's water contains far more free carbonic acid than the natural water ever contains.

72 Q. Do you find carbonic acid of bicarbonates to be present?

A. Any water containing free carbonic acid contains also carbonic acid of bicarbonate, because the carbonic acid first combines with the carbonates and then the rest of it is free carbonic acid.

73 Q. Have you made any computation of the quantity of such carbonic acid which is present in the Schultz water analyzed by you?

A. I have not. It is, however, considerably more than the quantity in the natural waters, for the reason that the pressure in those syphons and the force with which the water is driven out of the syphon by opening the valve, is far greater than the pressure exerted on the corks closing the bottles of natural water.

74 Q. Does this excess of carbonic-acid gas escape when the syphon is opened?

A. It does.

Cross-examination by Mr. JONES:

75 X Q. You stated at the outset of your examination, if I remember correctly, of having made an analysis, not only of
39 Schultz's so-called vichy water, but the so-called artificial vichy water of other manufacturers; what others?

A. I think there were in all about a dozen here in the city of New York.

76 X Q. What other waters did you analyze? Can you name them?

A. Hanbury Smith, for instance; Walker, Bolen & Byrne, Ludin—I will find out the whole for you, and give it to you later.

77 X Q. I wish you would. Did you make the analyses of all these waters at the same time?

A. Yes; they were made, I think, inside of a month or two.

78 X Q. And when was this?

A. It was in the winter of 1888 or 1889, I think.

79 X Q. Do you know what occasioned your being employed to make those analyses?

A. It was one of those newspaper reports. A reporter of a newspaper, or a representative of the editor, called upon me to have certain work done; just the same as I have also for the *Herald* at the time of the cholera scare, about five years ago, made the analysis of a dozen or two of the water supplies of cities in the neighborhood of New York, from Boston down south.

80 X Q. You mean analysis of the ordinary waters?

A. The ordinary drinking waters, yes; and as I have made for other journals examinations of other substances which are produced by a great many manufacturers, for the purposes of comparison.

81 X Q. At the instance of what newspaper did you make these examinations?

A. Mr. Haynes was connected with the *Tribune*. I think he was private secretary.

82 X Q. Did you make any report?

A. Yes, I made a report to him at the time.

83 X Q. Have you got a copy of that report?

A. I think I have in my copy book; yes.

84 X Q. Will you let me have a copy of it?

A. Certainly.

40 85 X Q. How did these various artificial vichy waters compare with each other; did they all agree in the result of their analysis?

A. They did not. Some of them ran near the Celestin; others were away off, and so on. Some were evidently made by one of those prescriptions according to Dick, which have been cited by me at the last meeting.

86 X Q. Will your report made to Mr. Haynes of the *Tribune* show these differences?

A. Yes, certainly.

87 X Q. If I understand you aright you claim merely that the artificial vichy made by Schultz corresponds to the analysis made by Bauer?

A. That is all I can claim for it; yes.

88 X Q. You do not claim, if I understand you, that it corresponds to the analysis of the natural mineral waters made by you?

A. It does not correspond to that; no, those natural mineral waters which I have been able to obtain here in this market, which were several, and which amongst themselves show considerable differences, far greater differences than the differences between Bauer and Schultz were, or ever have been.

89 X Q. Do you mean to say that Schultz's artificial vichy corresponds exactly with Bauer's analysis?

A. Almost so; yes. An analysis is a process which gives us the results and if the thing is afterwards compounded and I obtain

again practically the same results on analysis, I should say that the water was the same.

90 X Q. You mean only by that that it is chemically, or substantially chemically, the same?

A. It is chemically the same—chemically and substantially.

91 X Q. You do not make any claim that the medicinal or therapeutical quality of Schultz's water is substantially or identically the same as that of the natural water, do you?

41 A. If the thing is chemically the same, as Bauer found the vichy water composed at that time, then the therapeutical properties will certainly be the same also.

92 X Q. That is only your judgment?

A. That is the judgment of chemists; because we know that those substances that are in there will group themselves according to their affinity, no matter what you put in; it is all the same whether you put in carbonate of potash or sulphate of potash, if other salts are in there, and so on, they will group themselves and they will always group themselves according to their affinity.

93 X Q. Chemically?

A. Chemically, and if they are chemically the same thing they must be also therapeutically the same.

94 X Q. Do you claim that a perfect analysis of mineral water can be made so as to show not only every chemical particle in the water, but also every medicinal and therapeutical quality?

A. A chemical analysis of a mineral water, of any water, a chemical analysis of anything, is limited as far as the finding of certain substances is concerned which are present perhaps in exceedingly small quantity, and with regard to those substances which are present in exceedingly small quantity I have got not the least doubt but that there may be differences found in a chemical analysis which would make the water different provided that these substances possessed any very high therapeutical value, but as far as the coarser constituents are concerned, as Bougeau says, Schultz's water is a fair reproduction, and is a reproduction made according to Bauer's analysis.

95 X Q. Every analysis is more or less imperfect, is it not?

A. Every analysis is imperfect, but if I make a combination of substances, according to an analysis, and examine that water again and then obtain identical results with the analysis of the original water, those errors are eliminated, provided that the two analyses come out identical.

42 96 X Q. Have you ever heard of a quality in natural mineral water termed "life"?

A. Yes; I have heard something spoken of that kind.

97 X Q. Do you understand what is meant by that term?

A. I have heard of it but I do not understand really what people mean by it.

98 X Q. What interpretation do you put upon that term?

A. It has been claimed for a great many of the natural waters

that they retain their carbonic acid better and for a longer time than the artificial waters. This is, however, true only under such circumstances that the carbonic acid which is used for the manufacture of the artificial water is very impure. The difference ceases to exist if the carbonic acid which is used for the manufacture of the artificial water is of the purest.

99 X Q. Is that the only interpretation that you can put upon that term?

A. That is the only one, that I have made for myself, yes.

100 X Q. Take the human body, as an example; chemically you can reproduce, if I understand it aright, blood, flesh and tissue, can you not?

A. No, sir; I never heard of it.

101 X Q. You cannot?

A. No.

102 X Q. Do you mean to say that blood and flesh and tissue cannot be reproduced chemically?

A. They cannot, no. Chemistry has never produced any organized material. Tissue is organized; blood is organized.

103 X Q. It is a matter of frequent occurrence to analyze human blood, is it not?

A. Yes; certainly.

104 X Q. Do you mean to say that the result of that analysis cannot be reproduced so as to give to a liquid substance all the chemical quality of blood?

A. It cannot, no.

43 105 X Q. Why not?

A. Because the blood is an organized body.

106 X Q. But you say you can completely analyze it?

A. You cannot completely analyze it even. You can find certain substances in it. I do not think a complete analysis of blood has ever been made. You can find certain substances in the blood which may be of more or less value for the physician who gets acquainted with their presence in the blood under certain circumstances; but an actual and complete analysis of blood has never been made.

107 X Q. That is not exactly what I am asking you. I ask you whether or not chemical science is capable of making a complete analysis of human blood and determining every chemical quality that it contains?

A. I do not know, and I do not think that point will be reached very soon, because we have got in our chemical publication continual instances of new substances being detected in the blood.

108 X Q. How is it in regard to the human flesh; is that capable of being analyzed?

Q. You can make an analysis, but you cannot make a very complete analysis. You can make certain determinations, but I do not think a very complete and absolutely exhaustive analysis of the human flesh has ever been made.

109 X Q. Let us pass from the human body to something a little nearer. You can make a complete analysis of ordinary drinking wine, can you not?

A. Of wine, yes; you can make an analysis, but there are certain substances which are present in such exceedingly small quantities that chemical analysis becomes baffled.

110 X Q. Are you familiar with the brand of claret called Chateau Lafitte?

A. I think I have drank it.

111 X Q. And Chateau Margaux?

A. Yes; the names are very familiar to me.

44 112 X Q. And Chateau La Rose?

A. Yes.

113 X Q. And Chateau La Bouton Rothschild?

A. I don't know that last one. I don't think I have ever had the pleasure of making its acquaintance.

114 X Q. I have named to you several of the most celebrated chateau clarets. You could analyze each one of those, could you not?

A. Yes; you could make an analysis of them, of course, but whether the analysis is a complete analysis which would enable you to produce the substances therefrom is another question, because there may be substances in there which are not known to science as yet. Organic chemistry is the most difficult portion of chemistry. Inorganic chemistry, the chemistry of mineral water, is a simple thing.

115 X Q. Suppose chemically you are capable—and I assume that you are capable—of making a complete analysis of a bottle of Chateau Lafitte wine, and suppose you did make such an analysis, and then you were to go into a drug store and get every one of the chemicals that you found in Chateau Lafitte, and you were to put them together in the quantities that you found, and added water, which I assume to be necessary, in the same quantity that you found it to be present in the bottle analyzed, would you undertake to say that you had made a bottle of Chateau Lafitte that was the same or substantially the same or anything like substantially the same as the original?

A. If the analysis of Chateau Lafitte could be made in such a way as has been suggested, the other would not be impossible.

116 X Q. Cannot such an analysis be made?

A. Not at the present time. I have not seen a single analysis of Lafitte or any other wine which would enable me to just reproduce the wine from the constituents. The analyses of wine are only made for the reason, not of distinguishing between the wines,

45 but rather to determine their strength in alcohol and probable adulterations; but I do not think anybody ever made an analysis for the purpose of making artificial wine from an analysis.

117 X Q. Why is that any more difficult than an analysis of mineral water?

A. For the very reason that it contains organic material which is very manifold, which is very apt to decompose, while in mineral water we have to deal only with inorganic substances.

118 X Q. Are there not organic substances in mineral water?

A. In some mineral waters organic substances are recognized. In some of the iron waters ulmic acid is recognized as an organic constituent in combination with iron, but in the case of vichy water and the analyses of water produced by Mr. Bougeau and Mr. Willm and Mr. Bouquet, and a great many others, there is nothing said of organic matter; it has not even been touched.

119 X Q. You stated, I believe, that Schultz' artificial vichy corresponded to Bauer's analysis of the Grand Grille spring?

A. I did.

120 X Q. Have you made any analysis of the natural vichy water from the Grand Grille spring?

A. I have made a partial analysis, yes, of the Grande Grille water as it is imported to this country.

121 X Q. You have not made a complete analysis?

A. Not a complete analysis. I only determined certain factors for the purpose of ascertaining whether certain substances claimed to be in the water were actually present, as for instance, arsenic.

122 X Q. If I understand you right you have not made an analysis of that water?

A. I have made an analysis but only a partial analysis, not a complete analysis. I determined the alkalinity, I determined the hardness, I determined the presence of nitric acid and nitrous acid, and I determined the amount of sulphuric acid and the
46 amount of chlorine contained in the water, and also, as I have already stated, the presence of arsenic; and the presence of silica has also been determined. The presence of potash, however, has been determined only qualitatively and not quantitatively.

123 X Q. Are you able to state the difference between Schultz' artificial vichy and the natural vichy from the Grande Grille spring?

A. I could give you the difference after I made a recalculation of the analysis. I have stated already that Bougeau and Willm both in calculating their analyses have followed an entirely different plan, which makes it appear as if they were different waters; and in order to understand whether the analysis of the substance is really different it would be necessary to rearrange the constituents upon a uniform plan, to ascertain just the similarity or difference between those two analyses.

124 X Q. I am not asking you about an analysis made by some one else. I am asking if you are able to state the differences between Schultz' artificial vichy and the natural vichy from the Grande Grille spring, as you have analyzed each water?

Objected to as indefinite, inasmuch as the witness has already testified to several analyses made by him of natural Grande Grille vichy water, which make them different.

A. In the first place, I have stated that I have not made a complete analysis of the Grande Grille but I have made a complete analysis of Schultz' water. An incomplete analysis I cannot compare with a complete analysis, but I have made, as far as the Grande Grille is concerned, a series of determinations which prove that the Grande Grille waters as they have been sold from time to time differ from each other; a water that is bottled at one season seems to differ from a water that is bottled at another season.

125 X Q. Those differences occur from natural conditions, do they not?

47 A. Yes, such natural conditions as the influx and admixture of impure other water with the real deep origin water.

126 X Q. Why do you say the influx of impure water?

A. For the reason that I have found certain impurities in all the natural vichy waters, which are not stated in the analyses, and which are recognized as substances only occurring in sewage waters.

127 X Q. Would not the chemical qualities of a natural spring vary from time to time from perfectly natural conditions?

A. I think both conditions are natural. It is natural with a spring that it changes occasionally.

128 X Q. Without the influx of impure water, to use your own expression, would not a mineral spring vary in its quality from time to time?

A. A great many springs may do so; others may not.

129 X Q. As a matter of fact, in your different analyses, have you not discovered chemical differences quite independent of such as might be caused by the influx of impure water?

A. I have not noticed any.

130 X Q. Have you not observed that there are differences in the quantity of the various chemical substances found in the natural vichy water?

A. I have certainly found differences, but they are just as well explained by the influx of surface sewage waters.

131 X Q. Are you willing to say positively that these differences are only caused by the influx of impure waters?

A. Also other waters may participate in the change, but where we do find surface sewage indicated it is natural that we have to consider those first.

132 X Q. You have said a good deal about surface sewage; we are plain about that. Now I ask you the question, are you willing to state that these differences in the chemical conditions of

48 the natural mineral vichy waters are due entirely to the influx of impure water, or are they due also to changes in the natural conditions of the springs themselves?

A. I do not know. Only a very serious and a very thorough investigation at the place where those waters occur would clear up such a question.

133 X Q. Do you know that the vichy company evaporate their waters and sell their resultant salts in this market?

A. So I have seen by an advertisement on the labels of the bottles, I believe.

134 X Q. Do you know whether or not Schultz' so-called vichy is made out of those salts?

A. I do not know, but I do not believe that it is.

135 X Q. Do you not know as a matter of fact that his waters are made out of manufactured chemicals?

A. That is what I always understood, and he did so at the last time that I was at the works, which was a number of years ago. What he does at the present time, I do not know.

136 X Q. You have made no analysis of vichy salts?

A. I did not.

137 X Q. What are the chief chemical characteristics of the results of an analysis of natural vichy water?

A. The presence of a considerable quantity of alkaline carbonates combined with a lesser quantity of chlorides and sulphates. There is also some carbonate of lime and magnesia in insignificant quantity.

138 X Q. What alkaline carbonates, specifically, are there in vichy water?

A. Carbonate of soda.

139 X Q. Any other?

A. There is said to be a very small quantity of carbonate of lithia present.

140 X Q. But carbonate of soda, you would say, would be the salient chemical feature of the water?

A. That is it—predominant.

49 141 X Q. If you were called upon to give a name chemically to this combination of elements that you find to exist in vichy water, what would you call it?

A. I could not make a chemical name at all for it. It is impossible, for the reason that the substances themselves are not present in automatic proportions; it is no chemical compound. Vichy water contains a number of chemical compounds in admixture with each other.

142 X Q. Suppose some one spoke of a carbonated water manufactured after the formula resulting from an analysis of vichy, what would you understand by that?

A. I would understand by that that it was an artificial vichy water.

143 X Q. That would be a perfectly intelligible name to you?

A. That would be intelligible, yes.

Adjourned to Tuesday, December 21, 1897, at 11 a. m.

NEW YORK, *December* 21, 1897.

Met pursuant to adjournment.
Present: Same counsel as before.

HERMANN ENDEMANN further cross-examined by Mr. JONES:

The witness produces a copy of tabular statement of the results of analysis, contained in a report made by him to Mr. Haynes for the *New York Tribune*, to which the witness referred at the last session, and the same is marked "Complainants' Exhibit A, December 21, 1897, F. M. A., ex'r."

144 X Q. You testified that you found in some of the natural vichy water the presence of nitrous acid in considerable quantities?

50 A. I did.

145 X Q. Are you able to state the effect of the other chemicals in vichy water in neutralizing this nitrous acid?

A. If I stated that these waters contained nitrous acid it was to the effect that they contained nitrous acid but in what combination that nitrous acid was I have made no effort to determine. Whether there was nitrate of sulphur or nitrate of potash or free nitrous acid is for the sanitarian a matter of indifference.

146 X Q. Do you mean to say that nitrous acid in any of those forms is necessarily deleterious to health?

A. I have not stated that the nitrous acid is deleterious to health, but, as I have stated, as far as I can remember, the nitrous acid is an indication of the intensity of bacterial life in waters, past or present.

147 X Q. Even as indicating the presence of bacterial life do you mean to say that the nitrous acid that you found in the vichy water is deleterious to health?

A. The nitrous acid in itself, in those quantities in which it is found in the water, is not dangerous to health, certainly no more than small quantities of other substances, which the water contains, like, for instance, arsenic.

148 X Q. Then you do not mean, if I understand you right, in testifying to the presence of nitrous acid, that the natural vichy waters are deleterious to health?

A. I do not.

149 X Q. You were asked to refer to some publications here and the question was, if I remember correctly, in substance, whether or not these publications were standard publications. Do you mean to say that all the works that you produced here were standard publications in the accepted sense of that term?

A. Such questions as the question about a standard publi-

51 cation is generally asked only under circumstances that a general work on chemistry is produced where the author is required, in most cases, to master a field of considerable dimensions; while in other publications the reputation of the man tells in every

case, must tell in each special case, whether the publication is to be considered as a standard publication or not.

150 X Q. Are not some of these publications that you have produced issued in the interest of private establishments and for certain special purposes?

A. I think they are, yes, though I cannot tell for certain. I think all those little publications that I produced which speak of the Jubelfeier of some of the Struve establishments no doubt are.

151 X Q. Will you kindly turn to them and indicate which of those publications you consider standard, in the sense in which you define standard, and those which you consider issues for special purposes and in the interests of private establishments or enterprises?

A. The publications Exhibits 8, 10, 11 and 12 are private publications, I believe, published in the interest of Struve's establishments; also Exhib-ts 5, 6 and 7 seem to be written in the interest of Struve. The rest of the exhibits do not show any tendency of being written in the interest of any private party.

152 X Q. Your knowledge of mineral waters outside of the experiments you have made, is based upon these publications, is it not?

A. I possess a good many more publications than those that I have produced here, and especially the technical portion of the mineral-water industry, and so on, is not based upon these publications at all, but is based upon publications which I have not produced here so far.

153 X Q. You testified that these evidences of bacterial life indicated the presence of microbes. Microbes of what?

A. Microbes are organisms in themselves; just as man may be a microbe to something superior and much larger than we are.

52 154 X Q. We will get at it a little more definitely. Suppose these microbes became transmuted into other forms, what would be the result of that transformation?

A. There is no evidence that any microbe can be transmuted into any other form; just the same as man cannot transmute himself into a dog. A microbe is a microbe.

155 X Q. Do you refer to these microbes as indicating germs of disease in case they are taken into the human system?

A. There are innocuous microbes and there are also microbes which produce special diseases.

156 X Q. Did you find any microbes in genuine vichy water that are likely to produce disease?

A. I have not extended my investigation to that point, and I have never examined genuine vichy water; I have only examined bottled vichy water, which has deteriorated in the bottle.

157 X Q. Of course that is what I refer to. I ask the same question with regard to the genuine vichy water that you examined. Did you find any microbes there that would likely produce disease when the water is taken into the human system?

A. I have not extended my investigations so far.

158 X Q. Who were the agents referred to by the vichy company from whom you purchased the genuine vichy that you analyzed?

A. Acker, Merrall & Condit.

159 X Q. Any more?

A. They also told me I might go to Eisner & Mendelson.

160 X Q. Where did you actually make your purchase?

A. At Acker, Merrall & Condit's.

161 X Q. Will you please explain whether or not an analysis by one chemist, especially if he be of a different school, would produce a different result from the analysis of another?

A. There certainly would be slight differences in the results, but if one man examines a natural water and its imitation both
53 by the same method the result will be very close provided that he uses the same method in analyzing both.

162 X Q. You do not mean to say that Mr. Bougeau is in error in the statement of the results of his analyses, do you?

A. I do not know where the error comes in. I think it very likely that Mr. Bougeau had a sample of water which did not really come from Schultz, but which was contained only in a Schultz siphon, otherwise I cannot understand the considerable difference in the results obtained, for I have examined the Schultz water, as I have stated before, already in the year 1888, and found practically the same results as I found in the year 1897, nine years later.

163 X Q. Were these samples of his waters in siphons or some other receptacle?

A. Which water; mine?

164 X Q. No; the Schultz water that you analyzed?

A. In siphons.

165 X Q. Does Mr. Bougeau in his testimony state that the Schultz water that he examined was contained in siphons?

A. He so stated.

166 X Q. Then if your analysis was of Schultz water contained in siphons, and Mr. Bougeau's also, how do you account for the differences in the results?

A. I have got no explanation. I do not know what Mr. Bougeau has done. He has not described his process of investigation nor does he say anything about the manner in which the Schultz water had been transmitted to him, or whether he bought it in the open market or where it came from.

Redirect examination by Mr. KNAUTH:

167 R. D. Q. Has the expression "life" of a mineral water any scientific meaning?

54 Objected to on the ground that the witness has testified that he did not understand the meaning of the term.

A. It has not.

168 R. D. Q. Would it make a difference in the results obtained

whether the artificial mineral water analyzed by you had been evaporated at a temperature of 100 degrees instead of 120?

A. The difference between the solid residue obtained at 100 and 120 is practically nothing. It is probably one tenth of one per cent. of the whole weight of the residue, in the case of Celestin, for instance.

169 R. D. Q. Please explain what if any difference exists between the artificial reconstruction of organized bodies, such as blood and flesh, and the reconstruction of inorganic matters such as water, or mineral water?

A. Mineral water contains salts, the nature of which is readily understood, which follow certain physical and chemical laws, while in the case of an organic substance like blood or flesh it is not only the chemical substance but also the structure of the material which is of considerable importance. For instance the blood contains blood corpuscles, small disks, of a special size, and they are really produced and can be produced only by the action of life; while the substances contained in mineral waters are dead, except such physical and chemical properties as I have stated before.

170 R. D. Q. Do wines contain any organic matter?

A. Wine consists almost exclusively of organic matter, provided that we do not speak of the water which the wine contains; and contains substances which have never been recognized by analysis and for that reason a wine cannot be imitated.

171 R. D. Q. Is the carbonic acid gas which escapes from mineral springs different from the carbonic acid gas employed in chemistry and produced by artificial means?

A. Carbonic acid is carbonic acid, whether it is produced artificially or whether it is found in nature.

55 172 R. D. Q. Does the same hold true as to the other chemical substances which you have ascertained in the analysis of the natural vichy water which you have analyzed?

A. Certainly.

173 R. D. Q. Is that the reason why you conclude that such natural vichy water can be artificially reproduced so as to be the same?

A. A natural vichy water can be made, for the reason that we know all the constituents which make up, to a whole, in the natural water.

174 R. D. Q. You have testified and shown by your table of comparative analysis that the several bottles of Grande Grille vichy water analyzed by you differed slightly in the chemical analysis. Has the time during which the water was kept in those bottles anything to do or may it have had anything to do with these chemical differences?

A. The chemical difference may be partly due to time, but it may also be due to original differences in the water, impurities in the bottles and the action of the water upon the glass of the bottles.

HERMANN ENDEMANN.

Attest: F. M. ADAMS, *Ex'r.*

GEORGE H. ENGELHARD, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. KNAUTH:

1 Q. State your name, age, residence and occupation.

A. George H. Engelhard; age, 27; residence, 57 East Sixty-fourth street; occupation, attorney and counsellor at law.

2 Q. Are you a German by birth, and familiar with the German language?

A. I am a German, not exactly by birth. I am a German by education. I was born in England and lived in Germany for 19 years.

56 3 Q. Have you frequently made translations from the German into the English language?

A. Yes, sir; very frequently.

4 Q. Have you made any translations of portions of the books which have been produced by the defendant here and offered in evidence in this case; if so, will you please produce such translations and state of what portions and what books they are translations. Please turn first to Defendant's Exhibit 1 and shortly state what you find on pages No. 113 and No. 114 of that book with reference to the manufacture of Dr. Fr. Adolph August Struve in Dresden.

A. I find on pages 113 and 114 of the book mentioned, a list of patents issued in the year 1823, in the Kingdom of Prussia, and among them, on page 114, I find the mention of a patent granted to Dr. Fr. Adolph August Struve, in Dresden, on the 15th of May, 1823, for ten years, for the extent of the entire Kingdom of Prussia, for the manufacture and use of apparatus to be used in the manufacture of artificial mineral waters, and for the employment of the process for that manufacture in connection with said apparatus.

I produce a translation of a portion of the book marked Defendant's Exhibit 2, commencing on page 3 of said book and ending on page 4.

Translation offered in evidence by defendant's counsel and marked "Defendant's Exhibit 26, Dec. 21, 1897, F. M. A., ex'r."

Objected to as immaterial, irrelevant and inadmissible.

Of Exhibit 3 I have not made any translation.

Of Exhibit 4 I have translated portions commencing on pages 305, 310, 316, 319 and 335.

Translation offered in evidence and marked "Defendant's Exhibit 27, Dec. 21, 1897, F. M. A., ex'r."

Same objection.

57 Of Exhibit 5 I have translated extracts commencing on the following pages: 1, 12, 17, 29, 33, 37, 38, 93, 104, 117, 157, 158, 170, 179 and 199.

Translation offered in evidence and marked "Defendant's Exhibit 28, Dec. 21, 1897, F. M. A., ex'r."

Same objection.

Of Exhibit No. 6 I have translated portions commencing on the following pages: 25, 27, 29, 40, 219 and 221.

Translation offered in evidence and marked "Defendant's Exhibit 29, Dec. 21, 1897, F. M. A., ex'r."
Same objection.

Of Exhibit 7 I have translated portions commencing on pages 6, 137, 143, 220, 221, 224 and 231.

Translation offered in evidence and marked "Defendant's Exhibit 30, Dec. 21, 1897, F. M. A., ex'r."
Same objection.

Of Exhibit 8 I have translated portions commencing on pages 6, 7, 9, 17, 19, and 23.

Translation offered in evidence and marked "Defendant's Exhibit 31, Dec. 21, 1897, F. M. A., ex'r."
Same objection.

Of Exhibit 9 I have translated portions commencing on pages 59, 63 and 65.

Translation offered in evidence and marked "Defendant's Exhibit 32, Dec. 21, 1897, F. M. A., ex'r."
Same objection.

Of Exhibit 10 I have translated portions commencing on pages 111, 8 and 9.

58 Translation offered in evidence and marked "Defendant's Exhibit 33, Dec. 21, 1897, F. M. A., ex'r."
Same objection.

Of Defendant's Exhibit 11 I have translated portions commencing on pages 3 and 10.

Translation offered in evidence and marked "Defendant's Exhibit 34, Dec. 21, 1897, F. M. A., ex'r."
Same objection.

Of Defendant's Exhibit 12 I have translated portions commencing on pages 12 and 27.

Translation offered in evidence and marked "Defendant's Exhibit 35, Dec. 21, 1897, F. M. A., ex'r."
Same objection.

5 Q. Are the several translations produced by you made according to the best of your ability and are they correct translations of the German words into the English language?
A. Yes, sir.

Cross-examination by Mr. JONES:

6 X Q. You are connected with the office of defendant's attorneys, are you not?

A. Yes, sir.

7 — Q. Have you translated all the matter in these works forming the subject of the several translations that you have made?

A. I do not understand your question.

8 X Q. Have you translated everything relating to the various topics under which these translations are grouped, and relating to the matter included in those topics?

A. Do you mean whether I have translated the whole of these books?

9 X Q. No; I assume without looking at them, that you
59 either made entire or partial translations of some subject-matter dealt with in particular parts of these works?

A. Yes, sir.

10 X Q. I ask you if you translated all the matter relating to that subject-matter or only a portion of it?

A. As I have stated, the translations which were presented by me were extracts from the works which have been presented as defendant's exhibits. I have translated such portions as related to the subject-matter of the suit.

11 X Q. In that you have indulged your judgment?

A. I have indulged my judgment in so far as I have selected only such matter as referred to the matters in suit.

12 X Q. Which appears to be of interest to the defendant?

A. No, sir.

13 X Q. Then as a matter of fact you have not made full translations of all that is written upon the particular subjects that you have made translations in regard to?

A. I cannot say any more than I have said in regard to the manner in which I made the translation. I have translated those portions of the books which so far as I could see, had any bearing on the question involved in this suit, without favoring either side.

14 X Q. Then you have not made full translation of all the matter in these works?

A. No, sir.

15 X Q. Relating to the subjects-matter that you have examined?

A. I have translated everything that has any bearing on the subject-matter of this suit.

16 X Q. Is that the only answer that you want to make to the question?

A. I must confess that I do not quite unde. and yet what you are driving at.

17 X Q. I will try to explain it. You are an intelligent
60 man. I usually make myself understood. These works deal topically with certain subjects relating to mineral waters, do they not?

A. Yes, sir.

18 X Q. Each topic is a separate one of itself, is it not?

A. Yes, sir.

19 X Q. A chapter.

A. Yes, sir.
20 X Q. Or a title?
A. Yes, sir.
21 X Q. Or a subject-matter?
A. Yes, sir.
22 X Q. I want to know if in each instance of your translations you have translated the whole subject-matter dealt with in those books, or whether you only have translated such portions as you thought were relevant to the issues in this case?
A. The latter is true; only such as I thought were relevant to the issues in this case.
23 X Q. You have not translated the whole?
A. Not the whole; no, sir.

Complainants' counsel objects to the translations which have been offered in evidence and moves to strike them out on the ground that they are not full and complete translations of the subjects-matter referred to.

Defendant's counsel states that the books offered in evidence represent a considerable amount of matter, and that complainant's counsel is entirely at liberty to read from the whole exhibits, and select from them such portions as he in his opinion may desire to offer in evidence; defendant's counsel has only selected and read in evidence such portions as he considered material, and of interest to the court.

Adjourned to Wednesday, January 5, 1898, at 11 a. m.
GEORGE H. ENGELHARD.

Attest: F. M. ADAMS, *Ex'r.*

61 NEW YORK, *January* 5, 1898.

Met pursuant to adjournment.
Present: Same counsel as before.

PAULIEN CHAUFOUR, a witness called on behalf of defendant, having been duly sworn, testifies as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?
A. Paulien Chaufour; age, 43 years; residence, 44 Siedler street, Jersey City; manager for Bouche, Fils & Cie.
2 Q. Who are Bouche, Fils & Co.?
A. Jacques Bouche; he is alone now.
3 Q. Jacques Bouche is the sole member of the firm of Bouche, Fils & Co., at the present time?
A. Yes, sir.
4 Q. Where is that firm doing business?
A. Mareuil sur Ay, in France, and 43 Broad street, New York.
5 Q. Are you attending under a subpœna served upon you?
A. Yes, sir.

6 Q. How long have you been the manager of Bouche, Fils & Co., in this city?

A. About five years.

7 Q. And before that time how long were you in the employ of Bouche, Fils & Co., here?

A. Since November, 1880.

8 Q. Did you come to this country from France in 1880?

A. Yes, sir.

9 Q. Where were you born?

A. Mareuil sur Ay.

10 Q. Do the house of Bouche, Fils & Co., sell in this market a water labeled with the name "Reignier," and also a water labeled with the name "Hauterive"?

62 A. Yes, sir.

11 Q. How long have you been selling these waters?

A. About four years.

12 Q. Do these waters come from private springs at Vichy, or do they come from springs owned by the State of France?

A. I understand they belong to private parties.

By Mr. JONES:

13 X Q. In Vichy?

A. In the Bassin de Vichy.

14 X Q. But not in Vichy?

A. Not in Vichy.

By Mr. KNAUTH:

15 Q. Do you know where the parties reside?

A. The business house is in Vichy.

16 Q. And do you know where these springs, Reignier and Hauterive are situated?

A. No, sir.

17 Q. Have you ever been at Vichy?

A. Never.

18 Q. Is the bottle which I now show you and which has been marked in evidence as Defendant's Exhibit 21, similar to the bottles and labels which are sold by your house here?

A. It is similar, but there is a slight difference which you can notice by this label (indicating).

19 Q. Will you allow me to offer this label, to which you have pointed, in evidence here?

A. Certainly.

20 Q. That is one of the labels used by the house of Bouche, Fils & Co., in the sale of the Reignier water?

A. We do not use the label. The water is shipped to us with this label.

21 Q. That is what I mean?

A. Yes.

63 22 Q. You sell the water with such a label on it?

A. Yes.

Defendant's counsel offers in evidence the label presented by the witness and the same is marked "Defendant's Exhibit No. 36, January 5, 1898, F. M. A., ex'r."

Objected to as inadmissible and immaterial.

23 Q. Can you account for the fact that the label for this water on the bottle, Defendant's Exhibit 21, shows some differences in the manner in which it is printed?

A. No, I cannot.

24 Q. Has your house ever sold bottles of Reignier water with labels such as appears on Defendant's Exhibit 21?

A. Yes, sir.

25 Q. And that was during the period that you have already stated; that is, within four years from this date?

A. Yes, sir.

26 Q. How long have you resided in the city of New York or done business here?

A. Since 1881.

27 Q. Continuously?

A. Yes, sir.

28 Q. From whom do you get this water called Reignier?

A. From the Societe Generale d'Eaux Minerales Naturelles du Bassin de Vichy et du Centre de la France.

29 Q. Do you get the other water which your firm sells, namely, the Hauterive water, from the same company?

A. Yes, sir.

30 Q. Has your firm always got these waters from that same company?

A. Yes, sir.

31 Q. Was your firm at that time — previous thereto selling the water of the complainant company?

64 A. Yes, sir.

32 Q. How long did your firm sell that water?

A. I cannot tell; probably from ten to twenty years.

33 Q. As long as you can remember here?

A. Oh yes; they were selling it when I came here.

34 Q. That was in 1880?

A. Yes, sir.

35 Q. And your firm continued to be the agent for the waters of the complainant- how long?

A. I suppose until about 1892.

36 Q. During this time, from 1880 until about 1892, did your firm hold an exclusive agency for the sale of the complainants' waters here?

Objected to on the ground that it is an improper inquiry into the private business of this concern; and the witness is instructed that he need not answer.

Defendant's counsel states that he is not aware of the fact that complainants' counsel is counsel for the witness and has any right

to instruct the witness as to whether he may answer or may not answer questions.

Complainants' counsel states that he is the counsel for the firm of Bouche, Fils & Co., of which this witness is manager, and has been for many years.

A. I must follow the advice of my counsel.

37 Q. Did the firm of Bouche, Fils & Co., from 1880 until 1892, sell the Grande Grille water, Celestin water and other waters shipped here by the complainant company exclusively in the United States, or were those waters also sold by others to whom the complainant company shipped them in this country?

A. It is a long time ago, but I think the company used to ship down South, New Orleans, and some other parts of the United States, without passing through Bouche, Fils & Co.

65 38 Q. What territory was covered by Bouche, Fils & Co. for those waters?

A. I do not think there was any specified territory.

39 Q. Did not shipments to other parties interfere with shipments made to your firm?

A. As far as I remember it interfered somewhat; yes.

40 Q. Did your firm have a contract with the vichy company concerning the sale of these waters?

Objected to as an impertinent inquiry into the private business of Bouche, Fils & Co. The witness is instructed that he need not answer the question.

The witness states that he does not know of any such contract.

41 Q. Was your firm of Bouche, Fils & Co. acting as agent for the complainant vichy company during those years?

A. I do not think they had the sole agency, but as I was only a clerk at the time I did not have all the details of our business. I had to attend to my books, and Mr. Paul Bouche, who had charge of the house, was managing everything, and he went to Paris very often and he transacted his business there direct.

42 Q. Was your firm in direct business communication with the vichy company at that time about the sale of this water?

A. The time I was clerk?

43 Q. Yes.

A. Yes

44 Q. Did your firm at that time account to the vichy company for the sales which they made of this water here?

A. Yes, sir.

Complainants' counsel moves to strike out the answer of the witness as improvidently given before counsel for complain-

66 ant interposed his objection, on the ground that the inquiry is an impertinent one as to the private business of Bouche, Fils & Co., and on the further ground that it is immaterial and irrelevant to this case.

Complainants' counsel admits that the firm of Bouche, Fils & Co. were the general agents of the vichy company in this country up to the year 1892, and that they had been such agents for about twenty years prior to that time.

45 Q. Do you know what resident partner in New York represented the firm of Bouche, Fils & Company at the time when you arrived here in 1880?

A. Yes, there was Mr. C. Jolivet and Mr. Henry Bouche.

46 Q. They both resided here?

A. Yes, sir.

47 Q. Are you acquainted with the artificial vichy water made and sold by Carl H. Schultz in this city during his lifetime?

A. In a general way.

48 Q. You mean you have seen it?

A. I have seen Schultz's artificial waters; yes.

49 Q. How long have you known it in a general way?

A. Fifteen years, I may say.

50 Q. You ever drink it?

A. I have drank the carbonated water occasionally, but seldom.

51 Q. You mean Schultz's?

A. Schultz's, yes.

52 Q. You do not drink his vichy water, do you?

A. I don't remember ever having drank it.

53 Q. Have you ever drank any vichy water at soda fountains in this city?

A. No, sir.

54 Q. Have you ever seen the name vichy on soda fountains in this city?

A. I don't remember.

55 Q. You do not drink any water at soda fountains, do you?

67 A. No, sir.

56 Q. Have you seen any siphons of vichy water made by other manufacturers in this city, such as Morgan, Matthews and others?

A. No, sir. You mean siphons with the name of vichy.

57 Q. Yes.

A. I have not noticed any.

Cross-examination by Mr. JONES:

58 X Q. You do not mean to state that the bottle marked Defendant's Exhibit 21, and the label which you have referred to in your testimony today, are sent out by any company in the town of Vichy proper, do you?

A. No, sir.

P. CHAUFOUR.

Attest: F. M. ADAMS, *Ex'r.*

Dr. AUGUSTUS CAILLÉ, a witness called on behalf of the defendant, having been duly sworn, testifies as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?
A. Augustus Caillé; 44 years old; I live at 753 Madison avenue; I am a physician.
2 Q. Will you please state how long you have been a physician?
A. I have been in practice since 1877 continuously.
3 Q. In New York city?
A. In New York city; yes.
4 Q. Where were you before that time?
A. We lived a number of years at Clinton, Iowa, and between that time and my active life in medicine I was for a number of years in Germany.
5 Q. Studying at the university?
A. Studying medicine, yes.
68 6 Q. How long have you been at the city of New York?
A. In the first place, from 1877 to date, and previously from 1868 to 1872, if I remember right.
7 Q. At that time did you make any study of medicine in the city of New York?
A. I first studied chemistry. I was a chemist up to 1873 and then I went abroad and studied medicine.
8 Q. And then returned?
A. And then return-.
9 Q. And did you obtain a degree in Germany?
A. I obtained one in Germany and one at Columbia, the College of Physicians and Surgeons in this city, after that.
10 Q. Have you since that time occupied any positions at the hospitals in New York city, or at universities here.
A. Yes, sir; quite a number. At present I am professor of medicine at the Post-graduate medical college here, and visiting physician to the German and Post-graduate hospitals, and consulting physician to the Red Cross hospital and Isabella hospital, in this city, and various other things; I don't know that they are important.
11 Q. Have you any knowledge about the sale of any artificial waters in this country under the name of vichy water?
A. Artificial vichy was sold in my earliest recollection. It was sold in this city when I lived here, between 1868 and 1872; and, in fact, I made artificial vichy for my father in Iowa, in 1873, and it was sold there.
12 Q. Under what name was it sold?
A. Under the name of vichy water.

By Mr. JONES:

13 X Q. You did not call it artificial water?
A. I don't think that the term artificial vichy was used.

69 By Mr. KNAUTH:

14 Q. What name or term was used for the artificial vichy waters which you saw sold by others?

A. Schultz' and Walker's vichy; I suppose I am most familiar with that. I can remember that as being put up in siphons with a yellow label and "vichy" on it. The vichy that I made was put up in the same way. Then I know that a number of druggists made their own vichy. I remember making some for Hugo Schmeltz, corner of Thirty-eighth street and Third avenue, as far back as 1872 or 1873; I am not quite sure.

15 Q. Was he a druggist?

A. Yes, he was a druggist, and he is still in the same line of business. I know that a number of other druggists made their own vichy at that time. I think Henry Diedel did, although I am not positive about that.

16 Q. Was such water bought and sold under the name of vichy?

A. Yes, sir.

17 Q. Was it sold in siphons?

A. Sold in siphons and sold on draught from fountains—from fountains in the cellar under the soda fountain.

18 Q. And when sold from such fountains did the fountains bear any name indicating what the water was?

A. There was usually a silver label on the soda fountain—"vichy water."

19 Q. Did you ever use such vichy water, I mean consume it, yourself?

A. Oh, yes; I use it myself every day and have for many years.

20 Q. Do you use any particular vichy water?

A. Schultz'.

21 Q. Do you know anything about the reputation of Carl H. Schultz, who is now deceased, as a manufacturer of artificial waters?

Objected to as immaterial and irrelevant.

70 A. You mean his reputation as a chemist?

22 Q. As a manufacturer of artificial waters?

A. The very highest reputation among medical men. We believe thoroughly in the purity of his water, and we have the highest regard for his standing as a manufacturer of mineral waters.

23 Q. Do you ever prescribe Schultz' artificial vichy to patients?

A. Yes, I frequently do.

24 Q. Is that a common practice among physicians here?

A. Yes, I think that most all physicians prescribe it.

25 Q. When you go into a drug store and ask for a glass of vichy what do you expect to get, a natural or artificial vichy?

A. Artificial water.

26 Q. Do you ever expect to get the natural vichy water when asking for vichy without specifying expressly that you want the imported or natural water?

Objected to as immaterial and irrelevant, as calling for a conclusion of the witness, as to what others expect, and as not calling for any facts properly admissible as proof in this case.

A. I would expect to get the artificial water if I go into a drug store and ask for vichy.

27 Q. Is that owing to the large extent to which artificial vichy water has been sold and consumed in this country?

Objected to as leading and calling for the conclusion of the witness as to a fact not shown to be within his knowledge.

Question withdrawn.

28 Q. Why is it that you expect to get an artificial water when asking for vichy simply?

A. Personally I favor the artificial vichy, because from my knowledge of waters, the mineral waters that I use for ther-
71 apeutical purposes, I know that the natural waters frequently contain organic matter, and to such an extent that it makes the water objectionable in our eyes, and so I naturally have drifted into expecting an artificial water, I suppote, for that reason, and it is so practically the same thing, and possibly better than natural waters, for the reasons that I stated. I don't know whether my answer will cover your question.

29 Q. Not exactly. I will ask you another question. Did it ever happen to you that when asking for vichy simply you were served with a bottle or siphon or glass of natural vichy?

A. Never.

30 Q. You mean that in all your experience you always obtained the artificial vichy when simply asking for vichy?

A. In every instance to my recollection, yes.

31 Q. Have you ever seen or used the natural vichy water?

A. Yes, I have seen it and prescribed it somewhat many years ago. Perhaps I have ordered it a dozen times in my life, but that was in the early part of my medical experience. I am almost sure that I have not prescribed it in the last six or eight years, or ten years perhaps.

32 Q. When prescribing such natural vichy water, did you prescribe it under the term "natural vichy water," or did you use simply the word "vichy"?

A. If I remember right I would tell the patient to get imported water; I think that was the term, "imported vichy." I think I never made use of the term "natural vichy," but very likely "imported vichy."

33 Q. When you see a water marked "vichy" in a siphon or in a bottle without anything else indicating its origin, do you expect it to be an imported or natural water, or an artificial water?

A. An artificial water.

34 Q. Can you state how widely or generally such artificial
72 water under the name of vichy is sold in the United States?

A. I do not know as to its sale, but I can say this, that I have

drank it in most all parts of the country where I have been. I have been in South and West and in Canada, and in Germany and Switzerland, and I have drank vichy at all these places wherever I could get it, and in a majority of cases I was able to get it.

35 Q. And that was always an artificial water?

A. Always artificial water, yes. I never drank the imported vichy in my life.

36 Q. If the Vichy Company could succeed in preventing the manufacturers of artificial water from naming the water "vichy" or "artificial vichy," could this artificial water be named in any other manner adequate to express its character to the public and to physicians?

Objected to as leading and as immaterial and irrelevant.

A. It would be very difficult to find another expression for vichy. It might possibly be named "aerated alkaline water," but I doubt if that would express what the term vichy implies. It would be a cumbersome and unsatisfactory name under all circumstances.

Direct examination closed.

Complainants' counsel moves to strike out all the testimony of this witness as immaterial, inadmissible and irrelevant to the issues in this case.

Cross-examination waived.

AUGUSTUS CAILLÉ, M. D.

Attest: F. M. ADAMS, *Ex'r.*

(Recess.)

73 CHARLES A. KINCH, a witness called in behalf of the defendants, being duly sworn, testifies as follows:

Direct examination by Mr. KNAUTH:

1 Q. What is your name, age, residence and occupation?

A. Charles A. Kinch; I am 46 years old; my residence is 273 West Seventieth street. I am a physician.

2 Q. Are you a practicing physician in the city of New York?

A. Yes, sir.

3 Q. How long have you been a practicing physician?

A. Since 1873.

4 Q. During all this time in the city of New York?

A. No, sir; in New York since 1879.

5 Q. And previous to that?

A. I practiced in Westfield, New Jersey.

6 Q. Where did you study medicine?

A. At the College of Physicians and Surgeons, the medical department of Columbia university.

7 Q. When did you commence your study of medicine?

A. In 1870.

8 Q. In New York city?

A. I studied with my father in New Jersey.

9 Q. When did you first come to New York city?

A. I came to New York city in 1879.

10 Q. Are you acquainted with an artificial mineral water called vichy water manufactured by Carl H. Schultz, now deceased?

A. Yes, sir.

11 Q. How long have you known such water?

A. At least since I came to New York. I knew it first when I came to New York.

12 Q. Are you using it yourself or prescribing it to patients?

A. Both.

74 13 Q. Since when have you been using or prescribing it?

A. Since I came to the city.

14 Q. Under what name or term do you prescribe it to your patients?

A. Simply "vichy."

15 Q. Have you known of any artificial water sold under the name of vichy in this market besides this water made by Carl H. Schultz?

A. Yes, sir.

16 Q. Can you state what such other artificial vichy waters you have known here?

A. I remember of Bolen & Byrne making an artificial mineral water called vichy; and I think Matthews does.

17 Q. When prescribing vichy water to a patient, what do you expect will be furnished to him in the drug stores?

Objected to on the ground that it calls for a conclusion of the witness.

A. The artificial vichy, unless I specify the natural.

18 Q. Do you sometimes specify the natural vichy water in your prescriptions?

A. Yes, sir.

19 Q. And when you want to obtain the natural vichy water you always use the term "natural"?

A. Yes, sir.

20 Q. Do you sometimes use the term "imported"?

A. Yes, sir.

21 Q. And under that term you always expect a natural water?

A. I expect the natural water when I say "imported."

22 Q. Have you ever used this artificial vichy water of Carl H. Schultz, now deceased, yourself?

A. Yes, sir.

23 Q. Do you know its character as a mineral water?

75 A. Yes.

24 Q. Do you know how largely artificial vichy water under the name of vichy has been sold by druggists in this city, and other places in the United States?

A. No, sir.

25 Q. Have you ever drunk it at soda fountains in drug stores?
A. I presume I have, often.
26 Q. How did you demand it there?
A. I asked for vichy and they drew it out of the fountain.
27 Q. Are these fountains usually marked so as to show what waters will come out of them?
A. Yes, sir.
28 Q. How are they marked?
A. The one from which the vichy water comes has the sign "vichy" on it.
29 Q. Nothing else but "vichy"?
A. Nothing else.
30 Q. How is this water when sold in siphons usually marked?
A. It is marked "vichy."
31 Q. And how is it commonly known by the public and spoken of?

Objected to on the ground that the witness has not shown any knowledge of how this thing is commonly known by the public.
Question withdrawn.

32 Q. How is it commonly known by the public and spoken of, if you know?

Same objection.

A. When I tell my patients to get vichy I often explain, "This that comes in siphons." I think that they generally believe I am ordering the artificial vichy.
33 Q. Why do you believe that to be the case?
A. Because their minds immediately run to a siphon rather than to a sealed bottle.
76 34 Q. Do you ever drink Rhine wine and vichy?
A. I am a teetotaler. I don't use it.
35 Q. Do you ever demand vichy in any restauraunt or hotel or bar-room?
A. No, sir.
36 Q. Do you know what the reputation of the artificial vichy water of Carl H. Schultz is?
A. I don't understand that question. Do you mean as a medicinal agent?
37 Q. I mean as a water?
A. Or as a table water?
38 Q. Whichever way you put it. I will leave it to you.
A. It is an alkaline mineral water.
39 Q. Has it any reputation as a medicinal water?
A. Yes, it has.
40 Q. What is its reputation?
A. It has the effect of an alkaline mineral water.
41 Q. Has it any reputation concerning its purity and method of manufacture?

A. That I do not know.

42 Q. You are prescribing it?

A. Yes, sir.

43 Q. On what ground do you prescribe it?

A. Because it is in the market.

44 Q. Do you know whether it is prescribed largely by physicians?

A. I do not know. I believe it is.

Direct examination closed.

Counsel for complainant moves to strike out all the testimony of the witness as immaterial and irrelevant.

Cross-examination by Mr. JONES:

45 X Q You spoke of sometimes prescribing the natural vichy and at other times prescribing the artificial. Why do you make a distinction between the two?

77 A. Different classes of patients is one reason. The cost of the domestic artificial vichy is less than that of the imported.

46 X Q. Any other reason?

A. Another reason is that there is a belief among physicians and patients that natural waters are more efficacious than the artificial.

47 X Q. Then you believe that there is a difference between the two?

A. When you come down to my belief, I am not sure that I do.

48 X Q. You have stated that there is a belief among physicians that there is a difference?

A. Yes, sir.

49 X Q. It has been testified to in this case by witnesses on behalf of the complainant- that there is this essential difference between artificial and natural mineral waters at least, that is, in the particular which the witnesses term "life," which they say is present in the natural mineral water and absent in the artificial. Have you ever given that any thought yourself?

Objected to, and complainants' counsel is requested to state by which witness this alleged testimony has been given on behalf of the complainant-.

Counsel for complainant refers his adversary to the depositions on file in this case.

Defendant's counsel, in view of the foregoing statement of complainants' counsel, states that after a careful perusal of all the depositions of complainants' witnesses, he fails to find any such testimony as alleged on the part of the complainant, and calls the attention of the court to the character of this question. He objects to the question as incompetent and improper, for the reasons stated.

A. I have.

50 X Q. What is your idea about it?

A. I don't have a great deal of faith in that idea.

51 X Q. Have you any faith at all?

78 A. Well, no.

52 X Q. Why, in case your patient is able to pay for the higher-priced natural vichy, do you prescribe that in some cases instead of the artificial vichy, as you have just stated? There must be some reason for it. What is the reason?

A. I have told that. The reason is, in the first place, the patient is able to pay for it; and the other reason is, in deference to the opinion which some physicians and many patients have, that the natural water is best. For my own case, a case in my own family, I would just as soon drink and use the artificial as the natural water.

53 X Q Have you ever been to Vichy?

A. No, sir.

54 X Q. Have you ever prescribed for a patient a course of treatment at Vichy?

A. No, sir.

55 X Q. Then you do not know anything about the effects of such a course of treatment?

A. At Vichy, no.

56 X Q. For what disorders do you usually prescribe vichy water, natural or artificial?

A. I prescribe it for a drink in fevers, or in cases of gastritis. I prescribe it also for its alkaline effects in acid conditions of the urine.

57 X Q. Have you noted with particular care the difference in the effect of the natural as compared with the artificial vichy in such cases?

A. I have not taken great notice, no.

58 X Q. Have you ever prescribed it for yourself—vichy water of any kind?

A. Not medicinally; no.

59 X Q. Then, upon what do you base your judgment that the artificial is as efficacious and has the same effects as the natural?

A. I have had patients who have been relieved by the natural water. I have had patients who have been relieved by the artificial water.

60 X Q. Then your idea, if you have never made any comparison between the effects of the two, is merely a general one, that

79 the artificial is as good as the natural; is that about it?

A. Yes.

61 X Q. And your opinion is not based upon any careful observation or accurate data?

A. How careful do you mean?

62 X Q. I mean to satisfy your judgment as a physician and a careful man.

A. I have satisfied myself that the artificial is as good as the natural.

63 X Q. How did you satisfy yourself?

A. I did not take the same patient in two successive attacks of the same disease and give him first one and then the other, and make notes of his case; neither did I take a series of cases of patients who needed alkaline water and make accurate notes; but as a man goes along from patient to patient he forms his ideas without taking such careful notes.

64 X Q. Is it not the fact that you simply prescribe these waters for their alkaline qualities, chemically and medicinally, aside from the fact that they are vichy or something else?

A. Sometimes for the alkaline qualities, sometimes for the carbonic acid which is dissolved in them.

65 X Q. And the fact that they are vichy waters is a mere incidental one, is it not?

A. In which class, the artificial or the natural?

66 X Q. In both cases.

A. I don't see the bearing of the question at all.

67 X Q. You say you have prescribed these waters, in one class of cases for their alkaline qualities, and in another on account of the presence of carbonic acid?

A. Yes.

68 X Q. Have you not made those prescriptions in those respective cases because of the alkaline qualities of the water irrespective of its origin, and of the carbonic-acid qualities of the water irrespective of its origin?

A. Yes, sir.

80 69 X Q. In other words, you desired in the one case to prescribe a water strongly characterized by the presence of alkaline qualities?

A. Yes.

70 X Q. And in the other a water containing a large and pronounced quantity of carbonic acid?

A. Yes, sir; carbonic-acid gas.

71 X Q. And you had no reference at all, aside from those qualities, to the fact that the water was vichy, artificial or natural?

A. Yes. No, you have gone a little too far in that. When I prescribe vichy, in a majority of cases I instruct them to get the artificial vichy. When I want them to have natural vichy, from France, I prescribe it as natural, imported vichy, and often define the springs.

CHARLES A. KINCH.

Attest: F. M. ADAMS, *Ex'r.*

Adjourned to Wednesday, January 12, 1898, at 2.30 p. m.

NEW YORK, *January* 12, 1898.

Met pursuant to adjournment.
Present: Counsel as before.

MAX EINHORN, a witness called on behalf of the defendant, having been duly sworn, testifies as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, residence, age and occupation.
A. Max Einhorn; born January 10, 1862; residence, 20 East Sixty-third street, New York city; occupation, physician.
2 Q. How long have you been practicing as a physician in New York city?
81 A. Since 1885. I was first in a hospital, if you consider that practice.
3 Q. Yes.
A. I was in the German hospital.
4 Q. Where did you make your studies of medicine?
A. First in the University of Kieff, in Russia; then in Berlin. I graduated in Berlin.
5 Q. When did you come to this country?
A. I came to settle here in 1885, but I was here in this country in 1884, for a little while.
6 Q. Have you any knowledge of the existence of an artificial mineral water called vichy water?
A. Yes.
7 Q. How long have you known of the existence of such artificial vichy water?
A. I knew of the existence of artificial mineral waters since I can remember, I think.
8 Q. Do you mean including vichy water?
A. I did not pay much attention at that time, when I was young, what kind of water it was called, but since I was here, since 1884, I certainly know about artificial vichy water.
9 Q. Have you used or purchased or prescribed artificial vichy water since 1885 in this city?
A. Yes, very often.
10 Q. Do you prescribe any artificial vichy water to you patients?
A. I prescribe it very often.
11 Q. In what way do you prescribe it to your patients; I mean how do you call it?
A. Vichy water; I tell them to get vichy. If they ask me whether they should use artificial or imported, then I tell them always to use the artificial; or if they ask me whose brand—there are different vichy waters, Schultz's and several others—I usually tell them to take Schultz's. According to my knowledge it is the best here.
12 Q. How long have you known Schultz's artificial vichy in this city?

A. As long as I am here.

82 13 Q. What is its reputation as an artificial mineral water?

A. I has a very good reputation. People are satisfied with it; physicians think that it is the best vichy water here.

14 Q. Do you ever purchase vichy water yourself?

A. Occasionally. As a rule we drink seltzer in my house.

15 Q. When purchasing artificial vichy water how do you call for it?

A. You mean if I want to drink it?

16 Q. Yes.

A. I simply say vichy. "Give me a glass of vichy."

17 Q. What do you get upon asking for a glass of vichy?

A. I usually get artificial vichy water. In most places in my neighborhood I get Schultz's.

18 Q. Did you ever get any natural vichy water upon asking for a glass of water?

A. I hardly think so, at least here in New York. I don't think it would ever happen, because the natural vichy water comes in bottles, and the vichy you get in drug stores is kept on draft, and they keep usually the artificial waters. They do not open a bottle.

19 Q. Is the word "vichy" generally applied by the public to the artificial waters kept by druggists and which are called for under the name of vichy?

Objected to as calling for the conclusion of the witness; furthermore, that no foundation has been laid for the witness to testify.

A. Yes, it is here.

20 Q. How long has that been the case, so far as you know?

A. As long as I know. I am here since 1885.

21 Q. Have you ever manufactured or sold any artificial vichy water?

A. No.

83 22 Q. Have you ever known any artificial vichy water outside of the city of New York, traveling in other places in the United States?

A. Yes, sir.

23 Q. In what part of the United States have you been?

A. I have been in the White mountains, in Washington, Baltimore, Philadelphia, Saratoga.

24 Q. Did you find such artificial vichy water sold under that name in these places which you have mentioned?

A. I don't know about Saratoga; I stayed there only several hours; I did not stop there long enough, but naturally I drank there some native mineral water. In the other places I have had occasion to drink artificial mineral waters, vichy.

25 Q. When you prescribe vichy to one of your patients, what kind or character of water do you expect them to get?

A. I usually expect them to get Schultz' vichy, here in New York. I usually tell them to get vichy water, and think they will get Schultz' vichy because most druggists have that.

26 Q. When you want one of your patients to get natural vichy water how do you prescribe that?

A. If I wanted to get natural vichy water, then I say, "You should get the imported."

27 Q. Have you any acquaintance with seltzer water or Selter's water?

A. Have I used it or drank it?

28 Q. Yes.

A. Yes, I drink it at home.

29 Q. Some of the witnesses for the complainant have endeavored to make a distinction between the name Selter's, for an artificial water, and the name of vichy, claiming that Selter's has become a generic name for sparkling mineral water while vichy has not. What have you to say on that point.

A. I know that there is a distinction chemically between seltzer and vichy, but I also know that among the lay public vichy
84 is simply meant as mineral water, and I don't think they care much what they get; I mean at the fountains in the drug stores.

Cross-examination by Mr. JONES:

30 X Q. Why do you prescribe vichy water?

A. On account of the alkaline salts that it contains; I think it is good. If I want a patient to drink an alkaline water, in suitable cases, then I prescribe vichy water.

31 X Q. Does the presence of carbonic-acid gas have anything to do with it?

A. Not very much, not in these cases, otherwise you could prescribe some other mineral water, simply a water charged with carbonic-acid gas; but if I specify vichy, then I mean to say I would like him to get the salts.

32 X Q. Have you any idea of the quantity of alkaline salts to the glass, or other quantity of water taken?

A. I have a, not accurate, but a general knowledge of it; but if I want to know exactly I can look up the books, or on the label on the bottle.

33 X Q. The profession of medicine being largely an experimental one, I presume that you have the idea of prescribing alkaline salts in those proportions found in vichy water; is not that it?

A. No; not exactly. I mean to say that if I want a patient to have alkalies, then I give him those salts myself, not taking into consideration the composition of that of the water at all. Then I do it to suit myself. I think I can do it better. I also specify the time when a patient should take those alkalies. If I prescribe vichy water, then I combine the introduction of water with alkalies, in similar cases.

34 X Q. There is a certain determinate quantity of alkaline salts in vichy water is there not?

A. Yes, certainly.

85 35 X Q. When you prescribe vichy water you intend to administer alkaline salts in the proportion that they are found in vichy water, do you not?

A. Then I mean a water, yes, which contains the same proportion of alkaline salts.

36 X Q. Do you know the proportion of alkaline salts in vichy water?

A. I do not know it. Several grains, I should think, to the gallon of water; it is not very much. But you find it in all the books.

37 X Q. What are those alkaline salts?

A. Principally sodium, carbonate, bicarbonate.

38 X Q. Bicarbonate of soda?

A. Yes. Those are the principal ingredients.

39 X Q. And bicarbonate of soda is the leading and principal medicinal element in vichy water, is it not?

A. I think so.

40 X Q. You do not know the percentage?

A. As I said, I do not know it, but we can find it out so easily.

Redirect examination by Mr. KNAUTH:

41 R. D. Q. Do you expect, when prescribing vichy to your patients, that they will get a water which will simply contain some bicarbonate of soda and nothing else?

A. No, I did not say that. If I tell them to get an artificial vichy water, then I mean a water which would contain the mineral salts in about the same quantity as it is contained in the natural water.

42 R. D. Q. That natural water is well known to the medical profession as having certain effects upon the system as an alkaline water, is it?

A. As an alkaline water, yes.

43 R. D. Q. And is it equally known that the artificial waters which are sold under the name of vichy, at least when they come from reputable manufacturers, are similar in constituents?

A. Yes, it is supposed that it should be similar.

86 44 R. D. Q. And it is for that reason that you prescribe them?

A. For that reason, yes. But here the artificial water has the advantage that it is fresh, that it has that same composition, and has a little more carbonic-acid gas. Schultz used to make it out of distilled water, I think; then he had the water free from bacteria, and that is some advantage to the profession.

45 R. D. Q. You mean this is an advantage over the natural water?

A. Yes.

46 R. D. Q. Why is that?

A. It will be a water which will be free from bacteria, if you distill it, as you could not do with the natural water; then it would not be natural any more.

47 R. D. Q. Would the natural water of a spring issuing from the earth at a somewhat high temperature be the same if bottled and kept in bottles for half a year or a year?

A. It is hard to tell whether it would remain as good. I should think by standing long some of the constituents may fall out.

Recross-examination by Mr. JONES:

48 Re-X Q. Can you give any reason, if artificial water is so much superior, as is intended to be represented by the questions just put to you, why the manufacturers of this so-called vichy call it vichy at all? Do you know the reason why they should?

A. We are here in America; we have not the springs right here, but we can manufacture a water right here which contains the constituents of that spring, and that is really what has been done here, a fresh water manufactured here containing the ingredients of that spring, and that is the reason why they gave it the name, so that it should be known that that water contained those ingredients.

87 49 Re-X Q. The labels and the signs that are put up in the drug stores do not say that it is manufactured, do they?

A. I don't know. I think as a rule they say simply "vichy," because everybody knows that the siphons are made here and must be filled here.

50 Re-X Q. Why do you say everybody knows that?

A. At least all people I know know that; I mean if you got a siphon that the water in it is made here.

51 Re-X Q. Have you ever talked with anybody on the subject?

A. I have not, except that I speak from my experience. I mean that I know that all these siphons are bought from the manufacturing places.

52 Re-X Q. Then what you mean to say is that you know?

A. That I know; yes.

53 Re-X Q. That these siphons contain artificial vichy?

A. Yes.

54 Re-X Q. You do not mean to say, without having discussed it with anybody else, that everybody knows that?

A. I think my acquaintances.

Counsel for complainant- moves to strike out what the witness says about what he thinks.

A. (Continued.) Whether I talked about it with others?

55 Re-X Q. Yes.

A. I have not.

56 Re-X Q. Then you do not know what other people think about it?

A. I should think they do think the same as I do.

57 Re-X Q. That is only a thought, is it?

A. Yes; that is a thought.

58 Re-X Q. You do not know?

A. What other people think about it?
59 Re-X Q. Yes.
A. I must say that people with some mental faculties will reason about it the same as I will.
88 60 Re-X Q. I am talking now about your knowledge. Do you know, without having talked with anybody about it, what other people think?
A. You mean whether vichy that we see in the bottles is artificial or not?
61 Re-X Q. Yes.
A. I could say that I know from a great many people that they know that it is artificial.
62 Re-X Q. How many people do you know know that?
A. I should say a great number.
63 Re-X Q. How many?
A. I can not say how many.
64 Re-X Q. You never have talked with anybody about it?
A. I have not talked to many people about it.
65 Re-X Q. Have you ever talked with anybody about it?
A. No; because I took it as self-understood.

MAX EINHORN, M. D.

Attest: F. M. ADAMS, *Ex'r.*

Adjourned to Thursday, January 13, 1898, at 2.30 p. m.

NEW YORK, *January* 13, 1898.

Met pursuant to adjournment.
Present: Counsel as before.

SAMUEL J. MELTZER, a witness called in behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?
A. Samuel J. Meltzer; age, forty-seven; residence, 66 East One Hundred and Twenty-fourth street; occupation, physician.
89 2 Q. How long have you been practicing medicine?
A. Fifteen years.
3 Q. Here in the city of New York?
A. Fourteen.
4 Q. How long have you lived in the city of New York?
A. Just fourteen years.
5 Q. Have you any acquaintance with an artificial mineral water called vichy water?
A. Yes, sir.
6 Q. How long have you known of such water?
A. Nearly as long as I am here; nearly fourteen years; in fact, if I am not mistaken, a little bit longer; I heard of it before.
7 Q. Have you used it yourself?
A. Yes.

8 Q. Have you prescribed it to patients?

A. I have advised vichy, and used to add, "You will do well if you take artificial vichy, for many particular reasons."

9 Q. When you prescribe artificial vichy to your patients, how do you call it in the prescription?

A. I did not exactly prescribe it; I advised it. I don't remember that I ever put it on paper.

10 Q. You mean not by written prescription?

A. Not by written prescription.

11 Q. You simply tell the patient?

A. Yes.

12 Q. What do you tell him—to get what?

A. I say, "I advise vichy," and I add, "You will do well in getting artificial vichy." I used to say, "Get Schultz' vichy."

13 Q. Why do you advise them to get Schultz' vichy?

A. In the first place, the reason is that it is made in a more convenient way; you can get it in siphons, assuming that it is exactly the same composition; and on the other hand I was never very sure whether the imported vichy had always the same composition, and I always believed that imported vichy was mostly artificial vichy. I had less confidence in imported vichy than in the vichy
90 made by Schultz. I knew what it was, but I did not know how you could know what it was in the imported vichy.

14 Q. Have you ever drank vichy water at soda fountains?

A. No, for the reason that I do not remember the time that I ever drank any water at soda fountains.

15 Q. Do you ever drink any vichy water?

A. Very often, yes; I have it at home. I do not drink very much of them, but I have had them at home often enough.

16 Q. What is the reputation of Carl H. Schultz as a manufacturer of artificial mineral water?

A. As far as I know the very best one can have had.

17 Q. When you see a water marked "vichy" in a siphon, what do you expect it to be, a natural or an artificial water?

A. Artificial.

18 Q. Has the word "vichy," as applied to mineral water, become a generic name in this country?

Objected as incompetent and inadmissible; as calling for the conclusion of the witness on facts not shown to be within his knowledge.

A. I do not understand exactly the meaning—what is meant by the term "generic."

19 Q. When your patients talk to you about vichy water and you talk to them about it, what water do you usually refer to, the natural or the artificial?

A. When patients talk to me about vichy water, as far as I can remember, it is not exactly meaning any special water. They may mean usually some sort of a mineral water. Most of the patients do not know much of the difference. When I talk to them I say

usually, first, "vichy" in general, and add that I mean I advise artificial water.

SAMUEL J. MELTZER, M. D.

Cross-examination waived.

Attest: F. M. ADAMS, *Ex'r.*

91 G. LANGMANN, a witness called in behalf of the defendant, having been duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?

A. G. Langmann; age, fifty-five; residence, 121 West Fifty-seventh street; occupation, physician.

2 Q. Are you a practicing physician in the city of New York?

A. Yes, sir; I am.

3 Q. How long have you practiced medicine here?

A. I have been practicing nearly twenty-eight years.

4 Q. Here in the city of New York?

A. Yes.

5 Q. Have you any acquaintance with an artificial mineral water called vichy water?

A. Yes; I know several kinds.

6 Q. How long have you known such artificial vichy waters?

A. I think ever since I have been here in New York, the whole time.

7 Q. Have you used these waters yourself?

A. Do you mean for my own person?

8 Q. Yes?

A. Yes; I have been using them once in a while.

9 Q. Have you ever prescribed them to patients?

A. Yes, very often.

10 Q. Have you ever purchased them in drug stores or other places?

A. I always order the patients to buy them.

11 Q. How do you describe them when you order patients to buy them?

A. I mostly supposed them to get the artificial kind which I knew was in the market.

12 Q. Do you tell your patients to get the artificial vichy?

A. Mostly, yes.

92 13 Q. Do you always use the term "artificial vichy" or do you simply use the term "vichy"?

A. I supposed that they would get hardly anything else but artificial.

14 Q. When you tell them to get a bottle or siphon of vichy what do you expect them to get at the drug store?

Objected to as irrelevant and inadmissible and calling for a conclusion of the witness.

A. I mostly recommend Mr. Schultz' preparation.

15 Q. Why do you recommend Mr. Schultz' preparation?

A. Because I was sure of its absolute purity and correct chemical composition.

16 Q. Did you know the deceased Carl H. Schultz?

A. Yes, I knew him.

17 Q. Did you know of his manufacture of mineral waters?

A. Yes, I did.

18 Q. What was his reputation as a manufacturer of artificial mineral waters?

A. I think it was the highest that I know of.

19 Q. Why is it that you expect your patients to get artificial vichy water when you ask them to get a bottle of vichy?

A. Because I think vichy taken outside of the place of Vichy has not the effect that it ought to have.

20 Q. Do you know how largely the artificial vichy water is sold in this city as compared with the sale of natural vichy water here?

A. I am not sure of it, but I think, from what I know, from my colleagues and my practice, it is decidedly much larger than the natural water.

21 Q. Have you ever noticed how soda fountains in this city are marked, in giving out an artificial vichy water?

A. The fountains I do not remember having seen, but the siphons.

Do you have reference to the siphons?

93 22 Q. No, I was speaking of the fountains?

A. I don't remember having noticed that.

23 Q. When you see a siphon of water bearing the name vichy, without anything else on the label, what do you expect the water in the siphon to be, an artificial or natural water?

A. I expect it to be artificial.

24 Q. Why do you expect it to be an artificial water?

A. Because the natural vichy water does not contain enough carbonic acid that it might be used in a siphon.

25 Q. Have you known several manufacturers of artificial vichy waters in this city or country; I mean by name or reputation?

A. Yes, I know several.

26 Q. When a patient tells you of having used vichy water, do you understand him to refer to the artificial or the natural water, when nothing else is said?

A. To the artificial.

27 Q. Why do you reach that understanding?

A. Because the use of natural vichy water is indicated only at the place itself. It is a warm water and contains very little carbonic acid, in consequence. An artificial water can be charged with carbonic acid to a great extent, and that is the reason also why it is used as a table water a great deal; so that I think, unless extra prescribed by a physician, we have always to suppose that the artificial water has been used.

Cross-examination by Mr. JONES:

28 X Q. From what you have just stated I assume that there are differences between the artificial and the natural vichy?

A. Yes, sir.

29 X Q. What do those differences consist of?

A. Especially the amount of carbonic acid.

30 — Q. Anything else?

A. Not that I know of.

94 31 — Q. Have you ever compared the analysis of the artificial with the natural mineral water?

A. Yes. You mean the labels that indicate the composition?

32 X Q. Yes.

A. Yes, sir.

33 X Q. Do they correspond?

A. I think they do; yes.

34 X Q. Do you know that they do?

A. I did not look at it lately, but I know that Mr. Schultz is very particular in all his analyses.

35 X Q. You do not know personally yourself?

A. Not lately.

36 X Q. Did you ever know?

A. Yes, formerly. I have compared it years ago. I could not give the correct analysis at present, but I remember that I compared it formerly.

37 X Q. What is the chief chemical characteristic of vichy water?

A. It is a strictly alkaline water.

38 X Q. Do you know the proportions of alkaline salts in vichy waters?

A. Yes; vichy water is the strongest, has the greatest amount of bicarbonate of soda of any water known. It contains about five to one thousand.

39 X Q. Then you would call that bicarbonate of soda No. 5, wouldn't you?

A. No. 5—five to a thousand.

40 X Q. That would be a fair name for it?

A. I don't know; there are other ingredients which are characteristic of vichy.

41 X Q. Do they play any medicinal part in the composition of the water?

A. Not particularly.

42 X Q. It is the carbonate of soda then that plays the chief part medicinally?

A. Yes, and the temperature also; that is very important.

43 X Q. Of what consequence is the temperature?

95 A. The temperature acts upon the mucous membrane of the stomach and intestines, in regard to absorption.

44 X Q. What is the difference in the temperature of the natural as compared with the artificial vichy?

A. The natural is 41 degrees Celcius.

45 X Q. What is the temperature of the artificial?

A. The artificial, of course, has the temperature of its surroundings.

46 X Q. In an average case what would that be?

A. You may have it the temperature of the room. If you put it on ice you will have it ice cold.

47 X Q. Could not the same condition be brought about with respect to the natural mineral water?

A. I would not say that it could be exactly the same, because in heating water containing carbonic acid some of the carbonic acid escapes. Of course you might bring it up to the same temperature, but whether you would be able to have exactly the same amount of carbonic-acid gas, I do not know.

48 X Q. There are two leading characteristics of this so-called artificial vichy, as I understand it; first, the presence of alkaline salts, in the form of bicarbonate of soda?

A. Yes.

49 X Q. Five parts in a thousand.

A. Yes.

50 X Q. And the presence of carbonic acid in a larger quantity than in the natural?

A. Yes, sir.

51 X Q. Now, why does Mr. Schultz call his vichy water vichy—by the name vichy?

A. Because I think vichy is almost the type of alkaline waters.

52 X Q. Any other reason?

A. I don't know of any other.

53 X Q. They are not exactly alike?

A. No; especially not in temperature and carbonic acid. That is the main difference.

96 54 X Q. Has carbonic acid or carbonic-acid gas any medicinal function?

A. Oh, yes.

55 X Q. Then medicinally artificial vichy is different from the natural?

A. Somewhat; yes.

Redirect examination by Mr. KNAUTH:

56 R. D. Q. Is, in your opinion, the natural bottled vichy water which we are able to purchase in this market the same as the water coming from the springs at Vichy, when drank there?

Objected to until it be shown that the witness knows the difference between natural mineral waters here and natural mineral waters at Vichy.

A. I suppose it is.

57 R. D. Q. Is it the same in temperature?

A. No, sir.

58 R. D. Q. Is it the same so far as the quantity of carbonic-acid gas contained in it is concerned?

A. That will depend upon the apparatus used in bottling it. I think that always some escapes even with the best apparatus.

59 R. D. Q. Does not the carbonic-acid gas escape if the vessels or bottles are left open for some time?

A. Certainly.

60 R. D. Q. Its retention would then be largely due to the quickness of the bottling operation?

A. Yes, sir.

61 R. D. Q. Do you as a physician prefer the artificial vichy water to the natural vichy water as sold in bottles in this city?

Objected to as not redirect examination and as irrelevant and inadmissible.

A. Yes, I do.

62 R. D. Q. Why do you prefer it?

A. Because I can heat it and bring it more to its natural
97 condition in that way. If I would heat the natural water it would lose almost all its carbonic acid.

63 R. D. Q. And if you heat the artificial vichy water what becomes of it?

A. I could make the excess of carbonic acid escape and retain probably as much as the natural contains.

64 R. D. Q. Suppose that this water was called by the manufacturer "carbonate of soda water No. 5," or "five-one-thousandths," would this, in your opinion be a properly descriptive name of such artificial vichy water to convey the meaning of vichy to the public?

A. In my opinion the public would have to be notified of the identity of both, as mostly the public is certainly not aware of any chemical composition of waters at all.

65 R. D. Q. When you see an artificial vichy water marked "vichy," do you suppose it to be a water similar in composition to the water coming from the Vichy springs?

A. Yes, I do.

66 R. D. Q. Is that the reason why you call it artificial vichy or vichy water?

A. Yes, sir.

67 R. D. Q. Could that name be expressed in any other way, not using the name vichy, so as to convey the same meaning to the public?

A. I don't know if it could, because it has become a substantive that denotes a certain quality of existence, as I might say a horse denotes a horse, and vichy denotes an alkaline water.

68 R. D. Q. Have you been traveling in the United States at all, in other cities?

A. Yes, sir.

69 R. D. Q. Have you ever found artificial vichy water in other cities of the United States?

A. I think I did, yes.

G. LANGMANN.

Attest: F. M. ADAMS, *Ex'r.*

98 JOHN P. DURFEE, JR., a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?
A. John P. Durfee, Jr.; age, 32; residence, 26 West One Hundred and Nineteenth street; occupation, manager of the firm of John Matthews.
2 Q. What is the business of the firm of John Matthews?
A. The manufacture of carbonated waters, soda water, mineral water.
3 Q. Here in the city of New York?
A. Yes.
4 Q. How long have you been connected with that firm?
A. About 17 years.
5 Q. Is its business an extensive one?
A. Yes, sir.
6 Q. Is the firm of John Matthews manufacturing any artificial vichy water?
A. Yes sir.
7 Q. How long has it manufactured such artificial vichy, if you know?
A. To my personal knowledge 17 years, and prior to that.
8 Q. How is this artificial vichy water sold by the firm of John Matthews?
A. In steel fountains.
9 Q. And is it sold to the public or to druggists?
A. Sold to druggists and dispensers of soda water.
10 Q. For use at soda fountains?
A. For use at soda fountains.
11 Q. Do you also manufacture soda fountains?
A. No, sir; we formerly did, but we do not now.
12 Q. How long did the firm of John Matthews manufacture soda fountains?
99 A. From 1832, probably, to 1891. 1832 was when the business was originally started. I think they probably manufactured them then. They did manufacture them then.
13 Q. Was there any artificial vichy water dispensed from such fountains, if you know?
A. Yes, sir.
14 Q. Were the fountains marked with the names of the waters which were given out by them?
A. Over the different draft-arms they have a label on them designating the different waters that are to be drawn through those draft-arms.
15 Q. And was the artificial vichy water among them?
A. Yes, sir.
16 Q. Which are the most popular waters thus dispensed from these fountains?

A. Carbonic or soda water, vichy, seltzer and kissengen.

17 Q. Do you know how these fountains were labeled so far as the artificial vichy was concerned; what was on the label?

A. Simply the name "vichy."

18 Q. Nothing else?

A. Nothing else.

19 Q. How long has that been the case, if you know?

A. Personally I know it for seventeen years.

20 Q. How long have you been in the city of New York?

A. Thirty-two years.

21 Q. Did you ever drink any vichy water at soda fountains?

A. Yes, sir.

22 Q. How is it commonly demanded by the public in the drug stores?

A. As vichy water.

23 Q. And dispensed as vichy water?

A. As vichy water.

24 Q. Is the sale of this vichy water a large one?

A. Yes, sir.

100 25 Q. Do you know whether it is also sold in other cities of the United States?

A. Yes, sir.

26 Q. Does your firm of John Matthews sell any artificial vichy water to other cities?

A. No, sir.

27 Q. You have strictly a local trade?

A. A local trade; New York, Brooklyn, Newark and those places.

28 Q. Have you ever seen the natural vichy water in bottles?

A. Yes.

29 Q. Here in this city?

A. Yes.

30 Q. Do you know how largely it is sold as compared with artificial vichy; I mean here?

A. I should think the sale was very small in comparison with the artificial water.

31 Q. Is your artificial vichy water made by a certain analysis, or according to a certain recipe?

A. Made from a formula.

32 Q. Do you know from what formula?

A. It is made from a formula that is supposed to represent the natural vichy water.

33 Q. Is that the reason why you call it vichy?

A. Yes, sir.

34 Q. Do you know how you could otherwise describe this water if you were prevented from using the name "vichy" for it?

A. No; I do not.

35 Q. Have you ever known of the manufacture of Carl H. Schultz, now deceased?

A. Yes, sir.

36 Q. Do you know anything about the reputation which he had as a manufacturer of mineral water?
A. It was excellent, of the best.
37 Q. How long have you known of Carl H. Schultz as a manufacturer of artificial vichy?
A. For a great many years.
101 38 Q. Can you give us some idea as to the quantity of artificial vichy water which is manufactured at your establishment?
A. I should have to refer to the records.
39 Q. You do not know even approximately?
A. Not just at this moment; no.
40 Q. How does the quantity of such vichy water compare with the quantities of other artificial waters made by your firm?

Objected to unless the witness is shown to have knowledge.

41 Q. Do you know how the quantity of artificial vichy water manufactured by your establishment compares with the quantity of other artificial waters there made?
A. I should think there was double the amount made.

By Mr. JONES:

42 X Q. The question is, do you know?
A. There is double the amount.
43 X Q. Do you know it?
A. Yes, sir.

By Mr. KNAUTH:

44 Q. Do you mean double the quantity of all the others together?
A. No, sir.
45 Q. You mean double the quantity of any other?
A. Yes, sir.
46 Q. Do you also manufacture artificial selters water or seltzer?
A. Yes, we do.
47 Q. Do you mean that your establishment manufactures about twice as much artificial vichy as it manufactures artificial seltzer?
A. Yes, sir.
48 Q. Is the artificial vichy water more popular here than the artificial seltzer?
102 A. Yes, sir.
49 Q. When you go into a restaurant and demand vichy, what do you expect to get?

Objected to on the ground that it is not shown that the witness is in the habit of going to a restaurant, or knows anything about what he expects to get.

A. The artificial water.
50 Q. Why is that?

A. Because it is universal, almost, here, to expect to receive the artificial water unless you call for the natural water specifically, specifying the natural water.

51 Q. Is the same true as to hotels or drug stores or other places where waters are dispensed?

A. Yes, sir.

52 Q. Is that the common custom of the people?

A. Yes, sir.

53 Q. Are you acquainted with the catalogues which have been in use by the firm of John Matthews?

A. Yes.

54 Q. Are you acquainted with this catalogue which I now show you (showing witness a paper)?

A. Yes, sir.

55 Q. Have you used it in your business?

A. Yes, sir.

56 Q. Did you distribute it among your customers?

A. Yes, sir.

57 Q. Did you know Mr. John Matthews, now deceased?

A. Which one?

58 Q. The father?

A. There was the original John Matthews, and then there was his two sons that had the business afterwards. I did not know the original one.

Defendant's counsel offers in evidence the catalogue referred
103 to by the witness, and the same is marked "Defendant's Exhibit Matthews Catalogue, Jan. 13, 1898, F. M. A., ex'r."

Objected to as irrelevant, incompetent and inadmissible.

59 Q. I notice that this catalogue contains a formula for vichy water. Do you still follow the same formula in preparing the artificial vichy water?

A. I cannot answer.

60 Q. You do not make it yourself, do you?

A. No, sir.

61 Q. You are superintending the selling business more than the manufacturing?

A. Yes.

62 Q. Have you in your employ any chemist or chemists who attend to the preparation of these artificial waters?

A. We have a chemist who attends to those things.

63 Q. Are there other manufacturers of artificial vichy water in this city who sell their water under the name of vichy?

A. Yes, sir.

64 Q. How long have there been such other manufacturers?

A. For many years.

65 Q. Has your firm of John Matthews ever received any protest from the Republic of France, or the Vichy Company, being the complainant in this suit, concerning the sale of such artificial vichy water under the name "vichy"?

A. Not to my knowledge.
66 Q. You are still selling it under the name "vichy"?
A. Artificial vichy?
67 Q. Yes.
A. Yes, sir.

Direct examination closed.

104 Complainants' counsel moves to strike out all the testimony of this witness as incompetent, irrelevant and inadmissible.

Cross-examination by Mr. JONES:

68 X Q. Suppose you put yourself back to the time when John Matthews began to make artificial vichy, and tell me what you suppose to be his intention in making artificial vichy?

Objected to as incompetent.

A. His intention in making artificial vichy was to make a water that would be similar to the natural spring water known as vichy.
69 X Q. And to be sold in place of it?
A. And to be sold as artificial vichy.
70 X Q. Does the firm of John Matthews now call this article made by them artificial vichy?
A. Yes, sir.
71 X Q. How long have they been calling it that?
A. Always, to my knowledge.
72 X Q. Are you sure of that?
A. I am.
73 X Q. In your invoices to your customers do you specify it as artificial vichy?
A. Yes, sir.
74 X Q. How long have you been doing that?
A. Ever since I have had the management of the business it has been done and I suppose it has been done prior to that.
75 X Q. Do you mean to say that in your bills of steel fountains to druggists you specifically mentioned the term "artificial vichy"?
A. I do.
76 X Q. And do you mean to say that during your entire employment by John Matthews, which I understand to be seventeen years, that has been the case?

A. I answered that question a moment ago. I said as long
105 as I had had the management of the business it had to my knowledge, and I think it has prior to that.

77 X Q. How long have you had the management of the business?
A. Seven years.
78 X Q. You only think that prior to that time the invoices read "artificial"?
A. I believe it has.
79 X Q. Do you mark the fountains in any way?

A. Yes, sir.

80 X Q. How do you mark them?

A. "A. V."

81 X Q. What does that mean?

A. Artificial vichy.

82 X Q. How long have you marked them that way?

A. The previous question covers that. I answer the same way.

83 X Q. You know that for seven years, in other words, they have been marked "A. V."?

A. Yes, sir.

84 X Q. And prior to that time you think they were marked that way?

A. I believe they were.

85 X Q. Do you know of any fountains in drug stores in New York where your so-called artificial vichy is sold that have the term "artificial" prefixed to "vichy"?

A. I do not.

86 X Q. As a matter of fact you know that there are no such fountains?

A. I believe there are none.

87 X Q. Artificial vichy is a cheaper article than the natural, is it not? You cannot have any hesitation about answering that.

A. It is put up in such a different way from my line of business; the reason I hesitate.

88 X Q. Taking a quart of your artificial vichy and comparing it with a quart of natural vichy, does it not cost a great deal less?

A. Yes; but it is put up in an entirely different shape. I
106 don't know what the comparative cost of the natural water would be if it was put up in the same shape.

89 X Q. How much do you charge for a fountain of artificial vichy?

A. For a fountain containing ten gallons we charge $2 at present.

90 X Q. Do you know the price of natural vichy in bottles?

A. I do not.

91 X Q. By the dozen?

A. I do not.

92 X Q. Singly or by the dozen?

A. I do not.

93 X Q. You never interested yourself to inquire?

A. No.

94 X Q. Don't you know as a matter of fact it is much greater than the price of your water?

A. No; I do not know.

95 X Q. You never troubled yourself to inquire about that?

A. No.

96 X Q. Do you believe that artificial vichy could have any place in the market unless it was very much cheaper than the natural? You hesitate in answering. Why do you hesitate?

A. I suppose not.

97 X Q. Now, I put this question to you. Do you not believe that the motive of John Matthews in originally making artificial vichy was to sell a water costing less, in the place and stead of the real vichy?

Objected to as incompetent.

A. It may have been for one of two reasons. It may have been that it cost less, or it may have been that it was impossible to secure the natural water to sell.

98 X Q. I ask you for your belief about it, founded upon such knowledge as you may have.

Same objection.

107 A. I believe so; yes.

99 X Q. And if the defendant Schultz in this case should be enjoined from the use of the term "vichy," a ruling of that kind would affect your business, wouldn't it?

A. It would not affect ours; no.

100 X Q. Why not?

A. Because we sell the artificial water.

101 X Q. Suppose that the court should decide in this case that Schultz could not sell artificial vichy, would not the same rule of law apply to your case?

A. I suppose it might.

102 X Q. And would your firm be highly interested in the result of this case?

A. Yes.

Redirect examination by Mr. KNAUTH:

103 R. D. Q. Have you ever tasted the natural vichy water?

A. Yes, sir.

104 R. D. Q. How is its taste as compared with the artificial vichy water manufactured by your firm?

A. It tastes about the same.

105 R. D. Q. You did not find any great difference between the two?

A. No.

106 R. D. Q. What did you taste—what particular Vichy spring?

A. I could not tell you at the present time.

107 R. D. Q. Do you know when it was?

A. No; I could not tell you when. Some time ago.

By Mr. JONES:

108 X Q. Nor where?

A. In New York at Delmonico's.

By Mr. KNAUTH:

109 R. D. Q. Is your vichy water used as a table drink?

A. Yes, sir.

108 110 R. D. Q. Largely?

A. No.

111 R. D. Q. How is it mostly used?

A. At soda fountains.

112 R. D. Q. Do you know the artificial vichy of the manufacture of Carl H. Schultz, now deceased?

A. Yes, sir.

113 R. D. Q. Is his water used as a table drink?

A. Yes, sir.

114 R. D. Q. Largely?

A. Yes.

115 R. D. Q. Is that used also at soda fountains?

A. Yes, sir.

116 R. D. Q. If you say that your firm always marked its fountains "A. V." for the artificial vichy, how do you account for it that in drug stores the name "vichy" alone usually appears over the faucet from which the vichy water is dispensed?

A. The vichy water dispensed at soda fountains has always to my knowledge been the artificial water.

117 R. D. Q. You have never seen any natural vichy water dispensed from any soda fountain?

A. No, sir.

118 R. D. Q. Do you know whether the natural vichy water is used as a table drink?

A. I do not. I suppose it is.

119 R. D. Q. You have never seen it used as a table drink?

A. I have seen it in hotels, yes.

120 R. D. Q. How did you happen to call for it at Delmonico's, as stated by you?

A. I think somebody else ordered it. I don't think I did.

121 R. D. Q. And you tasted it?

A. And I tasted it.

JOHN P. DURFEE, JR.

Attest: F. M. ADAMS, *Ex'r.*

Adjourned subject to notice.

109 NEW YORK, *January* 20, 1898.

Met pursuant to notice.

Present: Counsel as before.

MARTIN HELDT, JR., witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?

A. Martin Heldt, Jr.; age thirty-eight; residence, 287 Delancey street; occupation, druggist.

2 Q. How long have you been a druggist?

A. About 20 years.

3 Q. All the time in the city of New York?
A. Yes, sir.
4 Q. And how long have you been at your present place of business?
A. Since 1882.
5 Q. How long have you known of the manufacture and sale of artificial vichy water in this country?
A. Over twenty years.
6 Q. Were you here in the city of New York previous to the time you became a druggist?
A. Yes, sir.
7 Q. How long?
A. I was born here.
8 Q. When?
A. 1859, December 15th.
9 Q. Lived in the city continuously?
A. Yes, sir.
10 Q. How is this artificial vichy water demanded at your drug store?
A. It is demanded as a bottle or siphon of vichy.
11 Q. Has it always been the case?
A. Yes, sir.
12 Q. Do you know the natural vichy water coming from the Vichy springs, from France?
A. Yes, sir.
13 Q. How is that demanded?
A. They would demand the natural vichy.
14 Q. What term would they use for it?
A. Imported vichy water.
15 Q. When a person comes to your store and demands a bottle or siphon of vichy, what do you furnish him?
A. I furnish him the artificial.
16 Q. Why is it that you furnish him the artificial water?
A. Because that is what he wants.
17 Q. You mean that has been your experience?
A. Yes, sir.

Complainants' counsel objects to the question as calling for a conclusion of the witness; and also objects to the answer as involving a conclusion of the witness upon facts not shown to be within his knowledge.

18 Q. Is artificial vichy water made by more than one manufacturer in this city?
A. Yes, sir.
19 Q. Is it commonly sold as vichy?
A. Yes, sir.
20 Q. Have you a fountain in your drug store?
A. No, sir.
21 Q. Do you dispense any artificial vichy by the glass?

A. Very seldom.

22 Q. Do you sell more seltzer or more vichy water from your drug store?

A. I sell more vichy.

23 Q. Has that always been the case, so far as you can remember?

A. It was.

24 Q. Do you know how the two waters compare as to the popularity? Which is the more popular of the waters?

A. For sickness, vichy.

25 Q. For patients?

111 A. Yes, sir.

26 Q. Do you ever sell any natural vichy water?

A. I have not sold any in my present place.

27 Q. Stating from your experience in your present place, can you state how much of natural vichy you have sold as compared with artificial vichy?

A. I have only sold a few bottles of natural vichy water since I am there.

28 Q. And of artificial vichy?

A. I could not tell you how many I have sold.

29 Q. Is it sold very largely?

A. At present I sell eight or ten bottles a week of vichy.

30 Q. From your experience as a druggist, is it your opinion that anybody can be deceived by the name vichy on the siphons or bottles of artificial vichy water which you use and sell to the public?

Objected to on the ground that it calls for the opinion of the witness on facts not shown to be within his knowledge, and as immaterial and inadmissible.

A. No, sir.

31 Q. Do you know the taste of the natural vichy water?

A. I do not.

32 Q. Never tried it?

A. Never tried it.

33 Q. Do you know what has built up a reputation for vichy in the United States, the natural or the artificial water?

Objected to on the ground that it calls for an opinion of the witness upon facts not shown to be within his knowledge; and furthermore, as inadmissible, incompetent and irrelevant.

A. The physicians prescribing it.

34 Q. And what do the physicians prescribe usually, so far as your experience goes?

A. They prescribe the siphon vichy, artificial.

Direct examination closed.

112 Cross-examination by Mr. JONES:

35 X Q. Do the physicians in their prescriptions call it artificial vichy?

A. They tell people to get a siphon of vichy.

36 X Q. Does the prescription call it artificial vichy?

A. No, sir.

37 X Q. Did you ever have anybody ask for artificial vichy at your establishment?

A. No, sir; vichy——

38 X Q. Artificial vichy is cheaper, is it not, than the natural?

A. I believe it is.

39 X Q. And you make more money by selling the artificial than you would by selling the natural?

A. I could make more money by selling the natural than by selling the artificial; that is, in proportion to the price.

40 X Q. What is the price of the artificial?

A. I pay eight cents for it and I sell it for twelve, but most druggists sell it for ten.

41 X Q. That is the artificial?

A. Yes, sir.

42 X Q. What do you pay for the natural?

A. I don't exactly know the price of the natural, but I would not sell it for less than twenty to twenty-five cents, and I think there would be more than four cents' profit on a bottle.

43 X Q. If you do not know the price of the natural water, how can you say that you would make more by selling the natural?

A. I think if I sold it for twenty-five cents I would make more than four cents.

44 X Q. What do you think the price is?

A. I don't think it is more than $2 a dozen; that would be about $8 a case. That would be seventeen cents a bottle.

45 X Q. And you say you get what for it?

A. Twenty-five.

113 46 X Q. Did you ever hear any of your customers speak of the artificial as artificial vichy.

A. No, sir.

Redirect examination by Mr. KNAUTH:

47 R. D. Q. Has there ever been any complaint made to you by any of your customers that they did not receive the thing which they asked for after you had furnished them artificial vichy upon a demand for vichy?

A. No, sir.

Recross-examination by Mr. JONES:

48 Re-X Q. Your customers probably did not know whether they were getting artificial or natural; is not that the fact?

A. I don't know.

49 Re-X Q. What is your opinion about it? Don't you think that a majority of people who go into a drug store and ask for vichy do not know whether it is artificial or natural?

A. That may be so.

50 Re-X Q. Don't you think so?

A. I think so. They don't know the natural.

51 Re-X Q. And they don't know that the artificial is artificial?

A. Intelligent people do.

52 Re-X Q. Take the great run of them; do they know anything about it?

A. Not the ignorant.

53 Re-X Q. I mean the majority of people that go into a drug store and ask for vichy?

A. Intelligent people know they are getting artificial vichy.

54 Re-X Q. What proportion of the ordinary run of customers in the drug stores do you class as intelligent in that respect?

A. It depends in what location you are in.

55 Re-X Q. In your location, for instance. One out of a hundred?

A. More than that.

114 56 Re-X Q. Five out of a hundred?

A. At least half of them.

57 Re-X Q. Do you undertake to say that half of the people that consume vichy water or buy it in your establishment know the difference between artificial and natural?

A. They know it is made here.

58 Re-X Q. Half of them?

A. Yes

59 Re-X Q. Upon what do you base that statement?

A. Of course they can see on the label where it is made.

60 Re-X Q. What label, for instance?

A. On the siphon.

61 Re-X Q. What is there on the siphon?

A. The manufacturer's name and address, and they know it is made there.

62 Re-X Q. It is only very recently that Schultz, for instance, has put on the word "manufactured;" is not that the fact?

A. In fact, I never examined his label until recently—until I saw that he put on "artificial." He has just had his address on.

63 Re-X Q. Do you mean to say that, to a person who did not know whether it was natural or artificial, the address would convey any intimation of the difference?

A. They would naturally think that it is made here.

MARTIN HELDT, JR.

Attest: F. M. ADAMS, *Ex'r.*

CHARLES LIGHT, a witness called on behalf of defendant, being duly sworn, testified as follows:

1 Q. Please state your name, age, residence and occupation?
A. Charles Light; age, 56; residence, 886 Bushwick avenue, Brooklyn, New York; occupation, mineral waters.
2 Q. Are you a manufacturer of mineral waters?
A. Yes, sir.
115 3 Q. How long have you been a manufacturer of mineral waters in Brooklyn?
A. About 28 years, in New York; I manufacture in New York.
4 Q. Have you ever manufactured any artificial vichy water?
A. I have manufactured that about 18 years.
5 Q. Can you state what quantities of such water you have manufactured here as compared with other waters?
A. I could not state that exactly. It is quite a good deal.
6 Q. Of which water do you manufacture most?
A. We manufacture the most of seltzer water—carbonics.
7 Q. To whom do you sell the artificial vichy which you make?
A. Drug stores and liquor stores, saloons, and so on, and private.
8 Q. How is it marked on the siphons or bottles in which you sell it?
A. Marked "vichy."
9 Q. Just "vichy"?
A. Yes, sir.
10 Q. Does it state your name or address on the siphon?
A. The name and the number of the street.
11 Q. Do you sell it in bottles, too, or only in siphons?
A. Siphons and bottles.
12 Q. Has there ever been any protest by the vichy company or by the French Republic against your selling your artificial water under the name of vichy?

Objected to as irrelevant, inadmissible and incompetent.

A. No.
13 Q. You still manufacture it in the same way?
A. Still, yes.
14 Q. Do you know under what name your artificial vichy is sold to the public?
116 A. As far as I know it is sold as artificial.
15 Q. Under what name, I ask?
A. Vichy.
16 Q. Do you know what the meaning of the name "vichy" in our community is?

Objected to as incompetent, irrelevant and inadmissible; also as calling for a conclusion of the witness upon facts not shown to be within his knowledge.

A. Similar to vichy, I suppose.
17 Q. Do you mean it means a water similar to vichy?

A. Similar to vichy water, yes.

18 Q. Do you know how the public demand and speak of the natural water which comes from the Vichy springs?

Same objection.

A. I do not know.

19 Q. Did you ever drink the natural water?

A. No, sir.

20 Q. Did you ever see it in bottles?

A. I have seen it in bottles?

21 Q. Do you know what quantity of artificial vichy water is dispensed in this community as compared with the quantity of the natural vichy water?

Same objection.

A. I know there is a great deal more sold that is manufactured here than there is natural, as far as I know.

22 Q. When a man speaks of vichy water, referring to mineral water, what do you take it that he means or refers to?

Same objection.

A. I think when he asks for vichy he expects to get the artificial, unless he asks for the natural or the imported.

117 23 Q. Do you make any artificial vichy water for soda fountains?

A. Yes, sir; I fill the fountains, too.

24 Q. Do you make fountains?

A. No; we do not manufacture the fountains; we just fill them.

25 Q. Do you know how it is sold from those fountains; under what name?

A. As far as I know they sell it as artificial. That is what we sell it for.

26 Q. You mean artificial vichy?

A. Artificial vichy.

27 Q. Have you ever heard of a complaint made to you that people getting vichy water from you did not get what they expected, namely, the natural?

A. No, sir.

28 Q. Is it not a matter of common parlance here to refer to an artificial water when talking of vichy?

Objected to as inadmissible, irrelevant, and that it calls for the conclusion of the witness on facts not shown to be within his knowledge.

A. Yes, I think it is.

29 Q. You know how the natural vichy water is commonly named when it is referred to?

Same objection.

A. They generally ask for the imported.

30 Q. Did you ever sell any natural mineral waters from soda fountains, or provide such waters for soda fountains?
A. I sold a very little of Saratoga water.
31 Q. When was that?
A. That must have been some nine or ten years ago; somewhere around there. I sold it a short time; not very long.
32 Q. What became of that sale?
A. There was not enough demand for it, and we could not sell it fast enough, and it would spoil in the fountain before it was
118 sold. We would sell about half the fountain, and then the rest was no good; it stood too long.
33 Q. Do you know what the reason of that was?
A. I don't know; there was no call for it.
34 Q. I mean why it spoilt in the fountain?
A. I don't know. There was plenty of gas in it; at the same time it got too old, kind of musty.

Direct examination closed.

Cross-examination by Mr. JONES:

35 X Q. Have you seen the mark on the fountains from which they draw artificial vichy?
A. We put them on ourselves.
36 X Q. What do you put on?
A. We put on just a "V" and "Artificial."
37 X Q. How long have you been doing that?
A. About 12 years.
38 X Q. That is, on the fountain?
A. On the fountain.
39 X Q. And that is down in the cellar of the drug store in which it is dispensed?
A. We put it in the cellar, yes. Some do not have it in the cellar. Some of them have it under the bar.
40 X Q. But it is not seen by the customer?
A. No.
41 — Q. It is hidden from him, is it not?
A. He would have to go down cellar.
42 X Q. At the faucet at which the water is drawn, what is put on?
A. There is a label generally on the marble apparatus, "Vichy."
43 X Q. Anything else?
A. That is all.
44 X Q. No word "artificial" put on?
A. No.

CHARLES LIGHT.

Attest: F. M. ADAMS, *Ex'r.*

119 GEORGE GREGORIUS, a witness called in behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?

A. George Gregorius; age, 57, the 22d of next March; residence, 323 West Thirty-first street. I am connected with two stores—one is 259 First avenue, and the other is 421 Eighth avenue; I am a member of the firm of Hunt & Gregorius, druggists.

2 Q. Please state how long you have been a druggist in New York city.

A. Thirty-four years. On the 29th of March, 1864, I landed in this country and entered the drug business, being employed on the 5th of April. I was about seven days here when I got my first situation.

3 Q. And you have been a druggist ever since that?

A. Ever since—on my own hook since the 2d of November, 1872.

4 Q. Have you known Carl H. Schultz, now deceased, a mineral-water manufacturer of this city?

A. I have known him since I have been in this country; I have been handling his water as a clerk as well as proprietor.

5 Q. You have sold his water?

A. I did.

6 Q. How long have you known of the manufacture of artificial vichy water in this city?

A. Since I have been in this country. I have sold it all the time. I sell it as carbonic vichy, and so forth.

7 Q. Under what name was the artificial vichy water sold here?

A. Under the name of vichy.

8 Q. Is that still the case?

A. It is still the case. Customers come in, and want a
120 siphon of vichy. I never handle the vichy in bottles. When they want a siphon, they expect a siphon of vichy; but when they want the bottled vichy, I have three springs—the Celestin, Hauterive and Grande Grille—and I ask them what they want. But I sell about 50 siphons of artificial to one of natural water. They don't drink it; they have it prescribed by physicians.

9 Q. How do you know whether they want bottled vichy?

A. They ask for siphons. I never sold a bottle of vichy. I believe it is made, but I never sold a bottle in my life—the artificial.

10 Q. When the natural vichy water is demanded, how is it demanded?

A. They want natural vichy; they generally say so, and they come with a paper, and ask the spring. I have three different springs. I think there are more. I sell more Celestin than all the others put together.

11 Q. When a person comes to your drug store, and simply demands some vichy, what do you give him?

A. Always the artificial, because the natural water costs them 25 cents and the other only costs 10 cents. The public would really laugh at me if I would give them natural water unless they demanded it. They take it for a table drink. The other is a dietetic and a health drink.

12 Q. You mean the natural is a health drink?

A. Yes.

13 Q. Not used as a table water?

A. I don't know but it might be.

14 Q. You mean to say the natural water is always called for as natural water?

A. In my store it is, and all the stores I have worked for.

15 Q. Has there ever been any complaint made to you by any of your customers that they were not served with the proper water, and you have given them artificial vichy?

121 A. I don't know of any. In fact I guess customers would kick if I would give them the natural water.

16 Q. Do you know what has built up the reputation for the name vichy in this country?

Objected to.

A. I could not answer that question.

17 Q. You do not know?

A. No, I do not.

18 Q. Do you know what the reputation of Carl H. Schultz as a manufacturer of mineral water was?

A. I think he was an authority in this country. We all consider him as such. I must say I have not taken any pains to look at the analysis of the waters. I never made them myself, but, of course, I have studied them as a student.

Direct examination closed.

No cross-examination.

Complainants' counsel moves to strike out the whole deposition of this witness on the ground that the same is irrelevant, incompetent and inadmissible.

GEORGE GREGORIUS.

Attest: F. M. ADAMS, *Ex'r.*

MAX WUSTROW, a witness called in behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?

A. Max Wustrow; age, 41; place of business, 82 Canal street; occupation, pharmacist.

2 Q. How long have you been a druggist in New York city?

A. Since 1880.

3 Q. How long have you lived here?

A. All my life, 41 years. When you ask the question how
122 long I have been a druggist, that is when I graduated, and I have been a pharmacist ever since.

4 Q. How long have you known of the manufacture of artificial vichy water in this country?

A. Ever since I have been in the drug business, about 25 years.

5 Q. How was that water sold to the public, under what name?

A. Always "vichy."

6 Q. Do people come to the store and simply ask for vichy water?

A. We always dispense artificial mineral water; that is manufactured by Schultz & Warker, or Schultz, or other manufacturers. When they ask for vichy water we just hand out the artificial vichy water.

7 Q. Are there other manufacturers of artificial vichy water in this city besides Schultz?

A. Yes, sir.

8 Q. Do you know how many?

A. I don't know how many, but I know there is a number of them.

9 Q. You have sold such artificial vichy water made by more than one manufacturer here?

A. Yes, sir.

10 Q. Did you know Carl H. Schultz or his business?

A. Personally I did not, only through business transactions.

11 Q. Do you know what reputation he had as a manufacturer of mineral water?

A. He was at the head of the profession, as far as I know.

12 Q. High reputation?

A. High reputation, as far as I know.

13 Q. Do you dispense any vichy water from a soda fountain?

A. Yes, sir.

14 Q. How is that called for?

A. Vichy—plain vichy.

15 Q. People ask for a glass of vichy?

A. Yes, sir.

123 16 Q. And you give them the artificial water?

A. Yes, sir.

17 Q. Is natural vichy water ever demanded at your store?

A. Yes, sir.

18 Q. How is it demanded?

A. They generally ask for imported vichy, and then we put the question to them as to what spring they want, the Grande Grille or Celestin, asking them to specify what they want.

19 Q. Do you mean to say that the natural vichy water is always asked for as natural or imported?

A. Imported.

20 Q. Imported?

A. Imported generally. That is the term they generally use.

21 Q. When a person simply asks for vichy, do you expect him to demand the artificial?

A. Yes, sir.
22 Q. Has that always been the case?
A. Always.
23 Q. And it is so now?
A. Yes, sir.
24 Q. How much natural vichy water do you sell from your store as compared with the sale of artificial vichy?
A. That is a pretty hard question to answer. About one bottle of the natural or imported to about 75 or 100 of the artificial.
25 Q. Has that been the case for any length of time past?
A. It has always been about that way.
26 Q. About the same proportion?
A. Yes, sir.
27 Q. Do you know what the name "vichy" means in this community as applied to a mineral water?

Objected to as incompetent, irrelevant and inadmissible, and calling for a conclusion of the witness on facts not shown to be within his knowledge.

124 A. I would understand, if a customer asked for it, that he wanted an alkaline water.
28 Q. So the customer will be satisfied if you serve him with any alkaline water?
A. Well, under the name "vichy," yes. I never heard any objections against serving them with the artificial water.
29 Q. Has the similarity of the water with the natural vichy water anything to do with it?
A. I presume it has.
30 Q. What do you expect an artificial water to be which is sold to you as vichy?
A. A correct imitation of the natural water.

Direct examination closed.
No cross-examination.

Complainants' counsel moves to strike out the whole of the deposition of this witness on the ground that the same is inadmissible, irrelevant and incompetent.

MAX WUSTROW.

Attest: F. M. ADAMS, *Ex'r.*

JOHN E. LUDIN, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation.
A. John E. Ludin; I am 47 years of age. I represent the firm of S. A. Ludin & Co., and the New York Bottling Company. I have been the manager of S. A. Ludin since 21 years. My business

address is Twelfth avenue and Forty-ninth street, and 622 and 624 West Fifty-fifth street. We have two places.

2 Q. Are you manufacturing any artificial vichy water?

A. Yes, sir.

3. Q. How long have you manufactured such water?

125 A. Since 21 years.

4 Q. Here in the city of New York?

A. In the city of New York.

5 Q. Are you also manufacturing other artificial mineral waters?

A. Yes; seltzer, kissengen and various other waters that we get orders for.

6 Q. Under what name is your artificial vichy water sold to the public?

A. Sold as vichy.

7 Q. Has it always been sold under that name?

A. Yes, sir.

8 Q. Do you know how it is sold by drug stores?

A. Sold in the same way.

9 Q. Do you have that name on the siphons?

A. Yes, sir.

10 Q. You sell it mainly in siphons?

A. In siphons.

11 Q. Also in bottles?

A. No, never in bottles; always in siphons.

12 Q. And on the siphons, what do you put on the label?

A. Simply "vichy;" that is, for that water; and the business address of the firm.

13 Q. Has there ever been any protest made against your manufacture and sale of such water under this name by the vichy company or by the French Republic?

Objected to as irrelevant, inadmissible and incompetent.

A. No, sir.

14 Q. Can you state what quantities of artificial vichy water you have thus sold since the time that you commenced to manufacture it?

A. It would be very hard to tell. It is 21 years.

15 Q. Is it manufactured in large quantities?

A. We manufacture it in large quantities.

16 Q. How does the manufacture and sale of this artificial vichy water by your firm compare with the manufacture and sale of other mineral waters in proportion?

126 A. Probably one-quarter; one-quarter the amount of vichy sold against seltzer; that is, seltzer in siphons. I mean we manufacture three times as much seltzer as we do vichy; 75 per cent. seltzer to about 25 per cent. vichy. That is the proportion among those two waters.

17 Q. Is that water dispensed from soda fountains?

A. I believe it is. We do not manufacture it in fountains.

18 Q. You manufacture it only for consumption in siphons?
A. In siphons; yes.
19 Q. And you know how this water is commonly sold to the public?
A. Yes, sir.
20 Q. How is it demanded when people come to you and want to purchase it?
A. They asked for vichy.
21 Q. And you then sell them this artificial vichy water?
A. Yes, sir.
22 Q. Why is it that you give this name "vichy" to the water?
A. In the first place, the practice has been followed by the trade since a good many years, since as far as I can recollect, probably 35 years.
23 Q. Here in this country?
A. Here in this city; and New York is generally the leader of the United States in that. Whatever New York does is generally followed all over.
24 Q. Is it an alkaline water that you manufacture?
A. Yes, sir.
25 Q. Carbonated?
A. Carbonated.
26 Q. Similar to the natural vichy?
A. That is a very indefinite term. You are asking me if we manufacture similar to vichy water. Now, there is no such thing as a vichy water, any more than you would say there is a Saratoga water. If you go to Saratoga there are probably a dozen
127 different springs and any of them are Saratoga water. There are five prominent springs in Vichy which doctors recommend. The Grand Grille, Celestin and Elizabeth, the doctors recommend for drinking purposes, and the others generally are used for bathing purposes; and when we get special orders from certain customers for vichy water, imported, they generally give the name of the vichy; they want a dozen or two dozen or want a case of Celestin, generally.
27 Q. Then they specify?
A. Then they specify, and it is generally at the recommendation of a doctor. Now, vichy does not mean anything; it is a very vague name. Vichy is the name of a locality in France in which there are various springs. It is a very indefinite term. If you ask me if I manufacture vichy, that does not mean anything.
28 Q. Has this water a certain similarity to the type of water itself at Vichy?
A. It is the imitation of one certain spring; that is the same spring as Mr. Schultz sells.
29 Q. And which spring is that?
A. The Grande Grille.
30 Q. And that was taken as a type of vichy water?
A. That is the type that has been followed in this country by

those who follow it exactly. But we don't specify the name Grande Grille on the bottle.

31 Q. Do you say that you have found it to be the case that natural is always specified and called for either by specific name or pointing out what is demanded?

A. Yes, sir.

32 Q. Has there ever been any complaint made to you by any of your customers that they were not furnished with the right water when you furnished them with artificial vichy upon a demand for vichy?

A. No, sir.

33 Q. Are there, also, other manufacturers of mineral
128 water in this city who make artificial vichy?

A. Yes, sir.

34 Q. Can you state about how many?

A. There must be at least 200 of them. As to manufacturing imitation of any spring that exists at Vichy, I don't believe there are probably but three firms in New York who do it.

35 Q. What do you mean by that?

A. I mean there are only three firms in New York making the water correctly, that is, after a certain spring.

36 Q. What do the others make, if you know?

A. The others make a water principally bicarbonate of soda.

37 Q. Carbonated?

A. Carbonated.

38 Q. All these artificial vichy waters are carbonated, are they not?

A. Yes, sir.

39 Q. So as to be sparkling?

A. Yes, sir.

40 Q. Do you know what the name "vichy" as applied to mineral waters means in this community?

A. I told you it had no significance at all, except the public who generally drink it drink it as a beverage. They do not drink it for its medicinal properties at all.

41 Q. I mean whether in common parlance it denotes an artificial or natural water in this community?

A. As long as it is in a siphon it is an artificial water, because there are very few manufacturers, I guess, in the United States who put natural water in siphons, very few.

42 Q. Can you describe your artificial vichy water by any other term or name so as to describe it correctly?

A. I could describe it, if I wanted to call it Grande Grille; then I would describe it correctly; that would be the correct name.

129 43 Q. I mean without using any name which has any connection with vichy?

A. The correct name for the water which we imitate is Grande Grille. There are three firms in New York who are manufacturing correct water. But we do not advertise it as Grande Grille.

44 Q. They call it simply vichy?
A. Simply vichy, and it is a very indefinite name.
45 Q. Could you call it by any other name than that so as to describe properly to the public what it was? I mean alkaline water or alkaline sparkling water or any other term in chemistry?
A. Yes, we could call it alkaline water, but that would not apply. The public follows a name, for instance, like carbonic-acid water. They say they want a carbonic water. It is more euphonious. We could not call vichy by another name; it would not take. We might as well call Kissengen a salt water. That would not take. There are many springs in this country which contain a good deal of alkali.

Direct examination closed.

Complainants' counsel moves to strike out the whole of the deposition of this witness on the ground that it is irrelevant, incompetent and inadmissible.

Cross-examination by Mr. JONES:

46 X Q. You could call this artificial vichy that you make an alkaline water made artificially after the formula of the analysis of vichy water, could you not?
A. That would take a label probably that would go around the bottle two or three times. The public would not take to that.
47 X Q. In other words, you would not be able to sell artificial vichy water in place of vichy water by any such terms as those?
A. You are asking me if I sell vichy. The word "vichy" is very vague.
130 48 X Q. (X Q. 47 repeated.)
A. No, I don't suppose we could.
49 X Q. Your intention in manufacturing and selling artificial vichy is to sell it in place of the natural Grande Grille vichy, is it not?
A. No, sir.
50 X Q. It is not?
A. No, sir.
51 X Q. What is your intention?
A. We sell vichy water which the public demands.
52 X Q. There was no demand for it until the manufacturers made it, was there?
A. No demand for vichy?
53 X Q. Yes; no demand for artificial vichy until the manufacturers made it?
A. I suppose not.
54 X Q. Then why did the manufacturers use the term "vichy"?
A. They followed out a custom that has existed since probably 35 or 40 years. I can't go back that far.
55 X Q. At the beginning there was no custom. Why, at the beginning, I ask you, did they call it vichy?

Objected to as going beyond the recollection of the witness.

A. We manufacture seltzer in the same way. It is by usage; that is all. The word "seltzer" is more correct than the word "vichy;" and naturally the people wanted a drink and it has been placed before them; we have given it to them. Now, we follow in vichy the same thing as we have in seltzer—given them a drink that they asked for, that the public wanted; principally a carbonated water to satisfy the thirst.

Complainants' counsel moves to strike out the answer as not responsive.

131 56 X Q. I ask you again to state why the manufacturers of artificial vichy called it at the beginning vichy?

Same objection as going beyond the recollection of the witness.

A. I could not tell.

57 X Q. Suppose I tell you. Was it not because they wanted to sell artificial vichy in place of the natural?

Same objection.

A. I have got to state again the same thing.

58 X Q. No, you cannot state it again; you have got to answer the question yes or no.

A. I cannot tell that. It is going back too far.

59 X Q. What is your opinion about it?

Same objection.

A. My opinion is the same way. I told you we were not manufacturing any vichy; it is an indefinite name, the name "manufacturing vichy."

60 X Q. (X Q. 57 repeated.) Was it not because they wanted to sell artificial vichy in place of the natural?

A. I cannot tell the object of the first manufacturers of the water at all. All I know is that we followed the principle that they had been going on.

61 X Q. The Vichy springs in France have had a great reputation for a great number of years, have they not?

A. Yes, sir.

62 X Q. And they had a great reputation when this industry of manufacturing vichy sprung up here?

A. Yes, the reputation existed, but the sale of waters was comparatively small in this country, and I think, if anything, we have advertised the water and made a better name for the Vichy springs than existed before.

132 Complainants' counsel moves to strike out the last clause of the answer as not responsive and also as incompetent and irrelevant.

63 X Q. How long have you known Schultz's artificial vichy?

A. Since 1865.

64 X Q. Do you remember the labels that he formerly used?

A. I could not state that positively, before I went into the business; that was twenty years ago

65 X Q. Do you remember a label he used, say, five years ago?

A. Yes.

66 X Q. What did it have on it?

A. "Vichy," to my recollection.

67 X Q. What else?

A. "Vichy, manufactured by Carl H. Schultz," I guess. No; not "manufactured," but "Vichy. Carl H. Schultz," with his label and his address, Central Park Mineral Springs—his trade-mark. That is all that was on his label.

68 X Q. Central Park Mineral Springs?

A. Yes; that is a trade-mark that he used on each label.

69 X Q. Do you mean to say that "Central Park Mineral Springs" was on the label?

A. Yes. "C. P. M." and a little pagoda. That was the trade-mark.

70 X Q. It did not state "Central Park Mineral Springs," but "C. P. M. S."?

A. Yes, C. P. M. S.

71 X Q. Were not the words "Grande Grille" also on the label?

A. I don't recollect that, five years ago, or any certain time. I know at a certain time he did have it on; yes.

72 X Q. It is not on it now?

A. I think I have seen lately "Artificial" on it.

73 X Q. And not "Grande Grille"?

133 A. And not "Grande Grille." That I won't be positive of. You know we glance at those things; they come in and out and you get so accustomed to it you don't notice any further.

74 X Q. What are the three establishments or firms that make artificial vichy according to the analysis of the Grande Grille spring?

A. I don't know that that would be right for me to tell them. I can say myself and Mr. Schultz, or his establishment.

75 X Q. And who else?

A. I don't know if it is right to state the person's name.

76 X Q. Yes, you have got to state. You have to answer the question. You have stated that there were three that make it?

A. Yes.

77 X Q. Now, who are they?

A. Morgan, Schultz and myself.

78 X Q. All in this city.

A. Yes; but I have no analysis on my bottles; I have simply the word "vichy."

79 X Q. All the others you say do not conform to the analysis of the spring?

A. No, sir.

80 X Q. None of the others?

A. No, sir.

Redirect examination by Mr. KNAUTH:

81 R. D. Q. Can you tell us any other name by which you could describe your seltzer water or seltzers water without using the word Selters?

Objected to as incompetent and irrelevant.

A. No, sir.

82 R. D. Q. Do you know anything of the manufacture of artificial mineral waters by Dr. Struve in Europe?

A. Yes, I was in his establishment in Dresden, and in Frankfort and Berlin. In Dresden I did not gain admission, nor in
134 Berlin, but in Frankfort, in his nephew's establishment, they showed me all through the establishment.

83 R. D. Q. According to the literature which has been offered in evidence in this case, Struve commenced to manufacture artificial vichy water in 1840. How long have you known of such manufacture by him in his establishment in Europe?

A. All I know is by reading in mineral-water works and reading of Struve as an authority on mineral waters. Struve is considered the father of the mineral-water industry in Europe.

84 R. D. Q. When was it that you were in Mr. Struve's establishment?

A. In 1879.

85 R. D. Q. You have only visited them?

A. I only visited them, yes. I also visited every mineral-water establishment in Berlin, Hamburg, Dresden, Bremen, Frankfort, Lyons, Paris and London.

86 R. D. Q. Do you know anything as to the practice of manufacturing artificial waters in those places and selling them to the public.

A. In London I don't recollect whether they manufacture artificial mineral waters there like we do. They manufacture mineral waters and put them in small bottles, pints and half pints. The same thing in Germany; I think I have still got some of the circulars; they manufacture all the imitation waters as we do, but instead of being in siphons, as it is in New York, it is principally in small bottles.

87 R. D. Q. How are these bottles marked or named to denote the various waters?

A. With a label.

88 R. D. Q. On the label what is contained to indicate what it is?

A. The name is on to indicate which spring it is, or which water they imitate.

89 R. D. Q. You mean the name of the spring.

A. Yes, the name of the spring.

90 R. D. Q. And the indication that it comes from Struve's establishment?

135 A. Or any other.

91 R. D. Q. Whatever it is?
A. Yes.
92 R. D. Q. Is that still the practice abroad?
A. I have not been there since 1879; I cannot tell you, but those establishments have been going since many years, and I should not think they would have changed their practice.
93 R. D. Q. You do not know?
A. I do not know. I have some of their price-lists among our papers, among which they state the sale of vichy as we manufacture it here.
94 R. D. Q. Do you know what has built up in the United States a reputation for vichy water?
A. I consider that we have done more to build up the reputation of vichy than anything that they have done. They have never advertised their water as extensively as we have advertised it.
95 R. D. Q. By "we" you mean what?
A. "We," the manufacturers of mineral waters.
96 R. D. Q. Do you know how large the consumption of artificial vichy water in this country is as compared with that of natural vichy water?
A. I could not tell you.

Complainants' counsel moves to strike out the redirect examination of this witness on the ground that the same is irrelevant, inadmissible and incompetent.

JOHN E. LUDIN.

Attest: F. M. ADAMS, *Ex'r.*

Adjourned to Friday, January 21, 1898, at 2.30 p. m.

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NEW YORK, *January* 21, 1898.

Met pursuant to adjournment.
Present: Counsel as before.

GEORGE KLEINAU, a witness called in behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation.
A. George Kleinau; age, 30; residence, 879 Park avenue; occupation, druggist.
2 Q. How long have you been in the drug business?
A. Fifteen years.
3 Q. Always in the city of New York?
A. Yes, sir.
4 Q. How long have you known of the manufacture and sale of artificial vichy water in this country?
A. Fifteen years.
5 Q. Are you selling it yourself?
A. Yes, sir.

6 Q. Under what name do you sell it?
A. Vichy, artificial vichy. They generally call for vichy.

By Mr. JONES:

7 X Q. What did you say about artificial?
A. It is labeled artificial now, lately, Schultz's is. They generally call for it under the name of vichy.

By Mr. KNAUTH:

8 Q. When a person comes to your drug store and demands some vichy, what do you give him?
A. Artificial.
9 Q. Has that always been your custom?
A. Yes, sir.
137 10 Q. Do you know whether it is the custom of other druggists?
A. I believe it is.
11 Q. Have you a soda fountain in your drug store?
A. Yes, sir.
12 Q. Do you sell any vichy water from that fountain?
A. Yes, sir.
13 Q. Is it an artificial or natural water?
A. Artificial.
14 Q. Have you ever had any complaint from any of your customers that you did not sell them the right thing when you gave them artificial vichy in answer to their demand for vichy?
A. No, sir.
15 Q. Are you also selling natural vichy water, from Vichy?
A. Yes, sir.
16 Q. How is that demanded?
A. It is demanded as imported vichy, and the name of the spring given.
17 Q. Do you keep several kinds of such natural vichy waters in your store?
A. Yes, sir.
18 Q. Which springs do you keep?
A. Celestin, Grande Grille, Hauterieve, Hopital.
19 Q. Of which water do you sell more—of the artificial or of the natural?
A. Artificial.
20 Q. Can you state about the proportion in which you sell the two waters?
A. About ten times as much of the artificial.
21 Q. Do you ever demand any vichy in hotels or in bar-rooms?
A. Yes, sir.
22 Q. How do you call for it?
A. Just call for vichy.
23 Q. What do you expect to get?
A. Artificial.

24 Q. Why is it that you expect to get the artificial vichy?
138 A. It being charged with gas.
25 Q. Do you mean you prefer it for that reason?
A. It is generally preferred as a drinking water; yes.
26 Q. What does the word "seltzer" mean as applied to mineral water?

Objected to on the ground that no proof is shown that the witness has any knowledge.

A. Artificial is generally meant.
27 Q. When a person speaks of seltzer water or Selters water, do you understand them to refer to the artificial?
A. Generally, yes.
28 Q. Why is that?
A. It is generally demanded. We generally dispense the artificial water—the same as the vichy.
29 Q. Do you also sell any natural seltzer water?
A. Yes, sir.
30 Q. How is that demanded?
A. Simply demanded as seltzer in jugs, imported.
31 Q. Then, as I understand you, the name vichy as in use here is applied to an artificial mineral water substantially in the same manner as seltzer is applied to another mineral water?
A. Yes, sir.

Direct examination closed.
No cross-examination.
Complainants' counsel moves to strike out the whole of the deposition of this witness on the ground that it is irrelevant, incompetent and inadmissible.

GEORGE KLEINAU.

Attest: F. M. ADAMS, *Ex'r.*

PETER RANKIN, a witness called in behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. State your name, age, residence and occupation?
139 A. Peter Rankin; age, 49; residence, Hancock street, Brooklyn; occupation, manager.
2 Q. Of what concern are you the manager?
A. Carl H. Schultz.
3 Q. What is Carl H. Schultz?
A. A corporation.
4 Q. Have you been acquainted with Carl H. Schultz, now deceased, who was formerly the defendant in this case?
A. Yes, sir.
5 Q. Have you been in his employ?
A. Yes, sir.

6 Q. How long?

A. Since June, 1867.

7 Q. And from that time on, how long?

A. I have always been there from that time on.

8 Q. Until his death?

A. Yes, sir.

9 Q. And since his death in the employ of the corporation of Carl H. Schultz?

A. Yes, sir.

10 Q. Is the business of Carl H. Schultz now carried on by this corporation substantially in the same way as it was theretofore carried on by him individually?

A. Just the same.

11 Q. When you came into the employ of Mr. Carl H. Schultz in 1867 what did you manufacture?

A. Selters, vichy, carbonic, kissingen, Carlsbad. We made about 22 waters, all told.

12 Q. And that was here in the city of New York?

A. Yes, sir.

13 Q. Where was the business then?

A. 112 East Fourteenth street.

14 Q. How long did it continue to be located there?

A. We moved from there in 1871 to the present location.

15 Q. And since 1871 the concern has been in the present location in First avenue?

A. Yes, sir.

16 Q. It is a large business, is it not?

140 A. Very large; yes.

17 Q. From 1867 on there was all the time manufactured at your establishment artificial vichy water, amongst others, was there not?

A. Yes, sir.

18 Q. Is it manufactured to a large extent?

A. Yes, sir.

19 Q. What is the present output of vichy water at your establishment in round figures?

A. About a million siphons a year.

20 Q. Do you also manufacture selters water?

A. We do.

21 Q. Also in large quantities?

A. Yes, about the same. Those are the two principal ones we have, selters and vichy.

22 Q. And there are also manufactured by your establishment a large number of other mineral waters?

A. Yes; medicinal waters.

23 Q. How are these waters called; I mean by what system or method are they called?

A. Called by their names.

24 Q. The names of the springs?

A. Yes, sir.

25 Q. And that is universally the case through the whole business?

A. Yes, sir.

26 Q. How is this artificial vichy water ordered of your establishment?

A. As vichy.

27 Q. Has it always been the case?

A. Always has been the case.

28 Q. When you get an order for so much vichy you furnish so many siphons of your artificial vichy?

A. Yes, sir.

29 Q. Has there ever been any complaint made to you by any of your customers that you were not furnishing them what was demanded or desired when giving them artificial vichy water in answer to a demand for vichy?

141 A. Not that I know of, no.

30 Q. Until the present suit was instituted was there ever any protest made by the complainant, The Vichy Company, or by the French Republic, against your sale of any such artificial water under the name of vichy?

A. I never heard of any.

31 Q. You have recently changed the style of your labels for vichy water, have you?

A. Yes; it is the same size and the same type, and manufactured from distilled water.

32 Q. All that is on the label?

A. Yes, in bold type.

33 Q. Have you ever heard that anybody was deceived into believing that this water sold by you as vichy was a natural water?

A. No, sir.

34 Q. Do you know how this artificial vichy water is commonly spoken of or demanded by the public?

A. As vichy.

35 Q. Do you know that from experience?

A. Yes. Of course we have heard that thousands of times: "How do you sell vichy water?"

36 Q. Do you know how it is ordered by physicians or prescribed by physicians?

A. As vichy.

37 Q. Do you get such orders from physicians themselves?

A. We do sometimes, yes.

38 Q. Have you a large clientage among physicians?

A. Over 700, who drink it in their own families.

39 Q. And prescribe it for their patients?

A. Yes, sir.

40 Q. I will show you now a pamphlet copyrighted by the firm of Schultz & Walker in the year 1865, and ask you whether you know that (showing witness a pamphlet).

A. Yes, I can identify it. I have seen that.

41 Q. Has that been used in your business?

A. Yes, years ago.

142 42 Q. How long did the firm or style of Schultz & Walker continue in that business?

A. They dissolved in 1872.

43 Q. Then Mr. Carl H. Schultz was doing business in the firm of Schultz & Walker when you came there?

A. Yes, sir.

44 Q. Since 1872 the business was carried on by him individually?

A. Yes, sir.

Defendant's counsel offers in evidence the pamphlet referred to by the witness, entitled "Schultz & Warker's Mineral Spring Waters. New York, 1865," and the same is marked "Defendant's Exhibit 37, Jan. 21st, 1898, F. M. A., ex'r."

Mr. JONES: For what purpose do you offer this?

Defendant's counsel states that he offers the pamphlet for the purpose of showing the honesty of intention of Mr. Schultz in entering upon the business of artificially reproducing vichy water, amongst other mineral waters, and the scientific character and way in which this undertaking was started. He does not mean to rely upon any of the contents of the pamphlet as establishing any other fact in favor of the defendant.

Objected to, first, upon the ground that the pamphlet is not sufficiently proved as having been published; and secondly, on the ground that the same is irrelevant, inadmissible and incompetent; and on the further ground that there is no evidence showing that the said pamphlet was ever communicated to the plaintiffs or any agents of them or either of them.

45 Q. You have been familiar with the doings of Mr. Carl
143 H. Schultz since the time that you entered into his employ, concerning the sale of his artificial mineral waters, have you?

A. Yes, sir.

46 Q. Did he ever attempt to sell his waters as and for natural waters?

Objected to as hearsay, and on the ground that the question calls for a conclusion of the witness on facts not shown to be within his knowledge; and also as incompetent and irrelevant.

A. No, sir.

47 Q. I have here a circular of July 31, 1862, of Walker & Co. Are you familiar with that circular (handing witness a paper)?

A. I have seen this.

48 Q. How long have you been familiar with that circular?

A. Since 1867 I have seen this.

49 Q. Has that been commonly used in your business?

A. Years ago very much so—yes.

50 Q. Distributed among customers?

A. Yes; and at the present time we have nearly all these on our letter-heads.

51 Q. You mean the certificates?

A. Yes; Joy, Silliman and Gibbs.

Defendant's counsel offers in evidence the circular referred to by the witness, and the same is marked "Defendant's Exhibit No. 38, January 21, 1898, F. M. A., ex'r."

Objected to as immaterial, irrelevant and incompetent, no evidence having been established showing that the same has ever been communicated to the plaintiffs or their agents.

52 Q. I also show you another pamphlet entitled "Carl H. Schultz's Mineral Spring Waters. 1891." Are you familiar with that pamphlet (showing witness pamphlet)?

144 A. Yes, sir.

53 Q. Was that also published by your establishment?

A. Yes, sir.

54 Q. And in what year?

A. 1891.

55 Q. Has it been used or distributed since?

A. Yes, sir; thousands of them.

Defendant's counsel offers in evidence the pamphlet referred to, and the same is marked "Defendant's Exhibit No. 39, Jan. 21, 1898, F. M. A., ex'r."

Objected to as irrelevant, inadmissible and incompetent.

56 Q. I also show you an advertising card, without date, purporting to emanate from Carl H. Schultz's establishment. Are you familiar with that (showing witness a card)?

A. Yes, sir.

57 Q. How long have you used such cards?

A. This card we got up about 1891, this style. We have had a similar card, but this card about 1891.

58 Q. Did you use that in your business and distribute it among your customers?

A. Yes; thousands of them.

Defendant's counsel offers in evidence the card referred to by the witness, and the same is marked "Defendant's Exhibit 40, January 21, 1898, F. M. A., ex'r."

Objected to as incompetent, inadmissible and irrelevant.

59 Q. I show you a circular entitled "Carl H. Schultz's Mineral Waters, Prepared from Pure Distilled Water." Are you familiar with that (showing witness a paper)?

A. Yes, sir.

60 Q. How long have you known that circular?

145 A. Since 1891.

61 Q. Has that been used and distributed in the business?

A. Very extensively; yes; amongst physicians, especially.

Defendant's counsel offers in evidence the circular referred to by the witness, and the same is marked "Defendant's Exhibit No. 41, January 21, 1898, F. M. A., ex'r."

Objected to as irrelevant, incompetent and inadmissible.

65 Q. Are there any other manufacturers of artificial vichy water in New York?

A. Yes, there are a good many in New York.

63 Q. Do you know about how many?

A. I suppose 40 or 50.

64 Q. Are you acquainted with some of them personally?

A. Some of them, yes.

65 Q. Can you state what the meaning of the word "vichy" is in our community as applied to a mineral water?

Objected to as incompetent, inadmissible and irrelevant, and calling for the conclusion of the witness upon facts not shown to be within his knowledge.

A. Vichy water is supposed to be water charged with gas containing somewhat an excess of soda.

66 Q. What do you understand by the words seltzer or selters?

A. Just the same, only more salt.

67 Q. Both mean an artificial water here?

A. Yes, sir.

68 Q. Are you acquainted with the natural vichy water?

A. I have tasted it.

69 Q. Do you know how that is sold or demanded?

A. As natural water, imported; natural, or the name of the spring given.

146 70 Q. Is the same thing true of seltzer water?

A. Yes, sir.

71 Q. Is your vichy water mostly sold in siphons, or also in bottles?

A. Mostly in siphons. That is our business, siphons.

72 Q. Has it always been the case?

A. Yes, sir.

73 Q. Do you know whether Mr. Schultz's artificial waters ever obtained any medals at any exhibitions?

A. I could not answer the question.

74 Q. You don't know?

A. I could not answer the question.

Direct examination closed.

Complainants' counsel moves to strike out the whole of the deposition of this witness as irrelevant, inadmissible and incompetent.

Cross-examination by Mr. JONES:

75 X Q. How do you label your siphons of vichy?

A. With a yellow label.

76 X Q. What is on the label?
A. "Artificial vichy manufactured from pure distilled water."
77 X Q. Anything else?
A. "Carl H. Schultz, 430–440 First avenue, New York."
78 X Q. Anything else?
A. On the other side the analysis of the water.
79 X Q. Anything else?
A. Our name stamped on the top, "Carl H. Schultz."
80 X Q. How long have you used labels with the word "artificial" on them?
A. About five or six weeks; that is, exclusively. Before that time we were doing the best we could, but since about the 13th of December absolutely.
81 X Q. No other label except those bearing the word "artificial"?
147 A. Since that time.
82 X Q. What do you mean by before that you did the best you could?
A. To change the label according to Mr. Knauth's suggestion.
83 X Q. When was that suggestion made?
A. I think along about October.
84 X Q. Prior to that time what kind of a label did you use?
A. "Vichy manufactured from distilled water. Carl H. Schultz, 430–440 First avenue, New York," and the analysis on the other side.
85 X Q. How long did you use that label?
A. Ever since I have been in the business.
86 X Q. Did it ever have anything else on it?
A. We had, years ago, "vichy," with the name and address.
87 X Q. What name and address?
A. Carl H. Schultz.
88 X Q. Didn't you have anything else on the label?
A. The name of the water, the name of the manufacturer and the address.
89 X Q. Didn't you have the name "Grande Grille" on the label?
A. Not on those that I speak of.
90 X Q. When did you use that?
A. About eight years ago.
91 X Q. How long did you use it?
A. I could not answer the question, how long.
92 X Q. Don't you remember that for years in your establishment you had the term "vichy" and the words "Grande Grille" in parenthesis right under that?
A. Yes, sir.
93 X Q. And did not that continue for years?
A. I could not say how many years.
94 X Q. Did it not continue for a number of years?
A. I presume so.

95 X Q. Did it not continue all the time that you were in
148 business with Mr. Schultz until four or five years ago?

A. Not of my knowledge.

96 X Q. Do you know why it was changed from "Grande Grille"?

A. We adopted a different label so as to distinguish our waters from other makers in New York, and to publish the analysis on the label.

97 X Q. Did you not use the label with the analysis at the same time that you used the label with "Grande Grille" on it?

A. We had some.

98 X Q. Did you have any different label at the same time?

A. I cannot go into that; I don't know much about that.

99 X Q. Do you mean to tell me that you do not know the different kinds of labels that you used in your business?

A. Yes, I know the colors.

100 X Q. Don't you know what was on them?

A. It is hard to remember.

101 X Q. Who has charge of the engraving or the printing of the labels?

A. Several people have made labels for us.

102 X Q. I mean in the establishment, who supervises the printing of the labels?

A. Mr. Schultz; he used to look out for the labels himself.

103 X Q. Did no one in your establishment ever have anything to do with the printing of the labels but Mr. Schultz?

A. No; he was the man that looked after the labels.

104 X Q. Do you mean to say you do not remember how long the words "Grande Grille" were used on those labels?

A. I do.

105 X Q. Do you mean to say you do not?

A. I do not remember now.

149 106 X Q. Were the words "Grande Grille" on the label when you first went with Mr. Schultz?

A. I don't remember.

107 X Q. Do you remember what the label was then?

A. I know it was yellow.

108 X Q. Do you remember what was on it?

A. I know the name was on it and the address and the name of the water.

109 X Q. That is, "vichy" was on it?

A. Yes, sir.

110 X Q. Do you remember anything else on it?

A. I cannot remember as far back as that; no.

111 X Q. Did not these changes in the style of the label produce more or less comment in the establishment when they were made?

A. No, sir; we are used to that sort of thing. We have no time to look at those things.

112 X Q. It does not produce any impression on your mind at all?

A. No, nor the public either.

Complainants' counsel moves to strike out the words "nor the public either" as not responsive.

113 X Q. It does not make any impression on your mind when Mr. Schultz changes his labels?

A. Not a great deal; no.

PETER RANKIN.

HENRY S. WEBSTER, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. State your name, age, residence and occupation?

A. Henry S. Webster; age, 45 years; residence, 896 Third avenue; place of business, 635 Lexington; occupation, druggist.

2 Q. How long have you been a druggist in New York city?

150 A. About four years.

3 Q. How long have you been connected with the drug business in any manner?

A. The same time.

4 Q. Do you sell any artificial water called vichy water?

A. Yes, sir.

5 Q. How long have you sold that?

A. Since we were in business.

6 Q. Do you sell much of it?

A. Yes, sir.

7 Q. How is it commonly demanded by the public?

A. The common demand is, they ask for Schultz's vichy.

8 Q. What do you give to a customer when he comes to your drug store and demands a siphon of vichy?

A. We usually ask whether he wants Schultz's or the Hygenic or Morgan's; or if we do not know the person, don't know who it is, we ask them whether they want the artificial or the natural.

9 Q. And when a person wants the natural, how does he ask for it?

A. They generally ask for the natural mineral water, or the imported French mineral water.

10 Q. Has it always been the case as long as you have been a druggist here?

A. Yes, sir.

11 Q. When a person speaks of having drank some vichy, what do you take it that he means by that?

A. We take it that he has drank the artificial.

12 Q. Why is that?

A. It is more common, more universally used than the imported.

13 Q. Do you also sell seltzer water or selters water?

A. Yes, sir.

14 Q. Artificial or natural?

A. Only artificial.

151 15 Q. Is the word "vichy" as applied to an artificial water as common here as the words "seltzer" applied to another artificial water?

A. More so.

16 Q. There is more vichy water drank here than there is seltzer?

A. In my business there is, yes.

17 Q. Has that been your general experience here?

A. Yes, sir.

18 Q. Have you a soda fountain?

A. Yes, sir.

19 Q. Do you dispense any vichy water from that?

A. We do.

20 Q. How do people demand that water when they come to the fountain?

A. They ask for a glass of vichy, and very often they ask whose make it is and I tell them it is my own make.

21 Q. Have you ever found that any of your customers said that they meant the natural water and were disappointed in obtaining the manufactured when asking for vichy?

A. No, I have never found anybody disappointed. I have on one or two occasions been asked whether I had the natural vichy water in my fountain, and I replied no.

22 Q. Is there any demand for the natural?

A. On only one or two occasions I have been asked. In these four years I might have sold half a dozen of the natural water; but persons have always asked, if they wanted the natural French water.

23 Q. Could, in your opinion, the demand for vichy existing here be filled by serving the natural water?

A. No, it could not be filled because it is too high in price.

24 Q. Is that the only reason?

A. I don't know. People don't want it. I handle three different kinds of makes in New York city here, and I sell about ten siphons of Schultz's to one of the others, because people ask me for Schultz's vichy.

152 25 Q. They ask specifically for Schultz's?

A. Yes, they ask directly for Schultz's vichy.

26 Q. What is the reputation of Carl H. Schultz as a manufacturer of mineral waters?

A. He is supposed to make the best artificial water in New York.

27 Q. And that is the reason why you keep it?

A. Yes, we can't get enough of it.

28 Q. When you see the name "vichy" on a siphon, would you suppose that siphon to contain natural vichy water?

A. No, sir; I suppose it contains an artificial water, unless it has a French label on it. It is a different label altogether from what is manufactured here.

29 Q. Are the French labels different from the labels used here on the artificial water?

A. Yes, there is a big difference, as big as between day and night.

Direct examination closed.

No cross-examination.

Complainants' counsel moves to strike out the whole of the deposition of this witness as irrelevant, incompetent and inadmissible.

HENRY S. WEBSTER.

Attest: F. M. ADAMS, *Ex'r.*

WILLIAM E. CRAMER, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?

A. William E. Cramer; age, 45; 781 Park avenue; occupation, druggist.

2 Q. How long have you been a druggist?

A. Thirty years.

153 3 Q. Always in New York city.

A. In New York city 22 years.

4 Q. And before that time?

A. In the country, up on the Hudson river, near Poughkeepsie.

5 Q. How long have you known of the manufacture and sale of artificial vichy water in this country.

A. Thirty years.

6 Q. How has this water been commonly sold and dispensed to the public, under what name?

A. By the name vichy and seltzer and kissingen.

7 Q. You have known of the manufacture of artificial vichy for thirty years?

A. I am not quite certain as to that. I was rather young at the time. I was a boy in a drug store at that time. I remember artificial mineral water coming from Hanbury Smith at that time, and I think I distinctly remember kissinger water. I don't know that I can recall vichy or seltzer just then.

8 Q. Have you had any knowledge of the manufacture and sale of artificial vichy by Carl H. Schultz, who is now dead?

A. I have.

9 Q. How long have you known of his manufacture?

A. Twenty-two years, ever since I have been in the business.

10 Q. Before that time under what name or how have you known of artificial vichy?

A. As vichy water.

11 Q. Was it commonly sold as vichy water?

A. Always.

12 Q. And demanded as vichy water?

A. Always asked for as vichy water.

13 Q. When a person comes to a drug store and demands some vichy water what do you give him?

A. Give him artificial water.

14 Q. Give him Schultz's vichy?

154 A. Usually. We have others. We usually give Schultz's because it is most always wanted.

15 Q. Do you also sell any natural vichy water?

A. Yes, sir.

16 Q. How is that demanded?

A. As imported vichy.

17 Q. Do you sell much of that?

A. Not a great deal; perhaps a couple of dozen a month, or something like that.

18 Q. Is that always specified as the imported vichy when it is demanded by the public?

A. Always, to my knowledge; yes. I never heard it asked for any other way than the imported vichy.

19 Q. Has that been the case during all these years that you have had experience as a druggist here?

A. It has.

20 Q. Then if the public speaks or writes "vichy," you understand that to mean artificial water, unless specified to be a natural water? A. Unless specified, "Send me imported vichy," they would always get the artificial.

21 Q. When you see the name "vichy," without anything else, printed on the siphon, would you take that to be an artificial or a natural water?

A. Artificial. I never saw a natural water, that I know of, in a siphon.

22 Q. You mean the mere fact that it was in a siphon would indicate to you that it was an artificial water?

A. Yes, sir.

23 Q. And when you see the word "vichy" printed on a bottle, without anything else, would you take that to be a natural or an artificial water?

A. An artificial water.

24 Q. What indicates to you that water is a natural water, in the case of vichy?

A. There are but two, that I ever saw; there is the Saratoga vichy and the imported article. They are both put up in bottles, without gas, so far as my knowledge goes; a different bottle

155 altogether, corked and capped without tying or wiring in any way; and the printed matter states that it is a natural water from a certain spring; of the imported water, I think there are four springs; there are only one or two that have much sale, but I believe there are four springs. It is specifically explained on the label that this is the natural water from this spring.

25 Q. How long have you known of the Saratoga vichy?

A. I cannot tell. I should say somewhere between five and ten years.

26 Q. You still sell that?

A. Yes, sir.
27 Q. And that is demanded as Saratoga vichy?
A. Always.
28 Q. Is, in your opinion, the use of the name vichy as frequent and common here as the use of the name selters?
A. I should think so, of late years. I don't know that it was so 20 years ago; perhaps the seltzer was a little more common, but today certainly vichy is asked for oftener than seltzer with me, used more.

Direct examination closed.
No cross-examination.
Complainants' counsel moves to strike out the whole deposition of this witness on the ground that it is immaterial, irrelevant and incompetent.

WILLIAM E. CRAMER.

Attest: F. M. ADAMS, *Ex'r.*

HENRY SCHMIDT, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct examination by MR. KNAUTH:

1 Q. Please state your name, age, residence and occupation.
156 A. Henry Schmidt; age, 41; 38 Avenue A; occupation, pharmacist and doctor of medicine.
2 Q. How long have you been a druggist in this city?
A. Twenty-three years; my own boss twenty-three years.
3 Q. Were you born in this city?
A. Yes, sir.
4 Q. How long have you known of the manufacture of artificial vichy water in this city?
A. As far back as when I was fifteen years old. That is about twenty-six years ago.
5 Q. How was that water sold to the public?
A. In siphons.
6 Q. Under what name?
A. Under the name of vichy.
7 Q. Was it described as vichy on the siphon?
A. Simply the plain word "vichy."
8 Q. And that has been the case during all the time you have stated?
A. That has been the case during all the time.
9 Q. When a person comes to your drug store and demands a bottle or siphon of vichy what do you furnish him?
A. Always Schultz's.
10 Q. Always an artificial water?
A. Always an artificial water, because it is invariably asked for, Schultz's vichy.
11 Q. Has Schultz's vichy a special reputation?

A. It has a special reputation, inasmuch as it is a very pure artificial water.

12 Q. Do you ever sell the natural vichy water?

A. Yes; I think we sold about half a dozen bottles in twenty-three years; that is about all.

13 Q. And how does the sale of artificial vichy water compare with that?

A. You may say one in a thousand, because we sell about one thousand siphons of artificial vichy to one of natural.

14 Q. Is the natural vichy water only sold in bottles?

157 A. Only sold in bottles.

15 Q. Are these bottles different in appearance and in labels from the bottles and siphons in which the artificial vichy is sold?

A. Entirely different; just as much difference as between a bottle of Rhine wine and a bottle of champagne.

16 Q. Do you think that in this community anybody could be deceived merely by the use of the word "vichy" on the siphon or bottle, to take it as a natural water?

Objected to as incompetent, irrelevant and immaterial and calling for the conclusion of the witness.

A. No, I don't think they could.

17 Q. Was there during those twenty-three years ever any complaint made to you by customers that what they had received, when you served them such artificial vichy upon a demand for vichy, was not the proper article?

A. Never a complaint made.

18 Q. Do you ever drink or demand vichy?

A. Yes, I drink a good deal of vichy, and I always drink Schultz's.

19 Q. When you demand it how do you demand it?

A. When I demand it at a fountain I simply ask for vichy. Of course I drink whatever is given to me there in the shape of vichy, because it is an alkaline water, and you could easily taste it. Of course everybody cannot taste it unless he knows what he is about.

20 Q. When you demand vichy in this manner what do you expect to get, the natural or artificial water?

A. The artificial water.

21 Q. Do you also sell selters water?

A. Yes, sir.

22 Q. Artificial or natural?

A. Both artificial and natural.

25 Q. How is that called for?

158 A. "Give me a siphon of seltzer," or "Send a siphon of seltzer to my house."

24 Q. What do you furnish them?

A. Always Schultz's seltzer water.

25 Q. How is the natural selters water called for?

A. In jugs.

26 Q. Is it described as natural by the party asking for it?

A. "Seltzer water in jugs," if you speak of seltzer water; and if you speak of vichy water, they always ask for imported vichy, in bottles.

27 Q. So that when you use the term vichy, in common parlance, you would refer to an artificial water?

A. Every time.

Direct examination closed.

No cross-examination.

Complainants' counsel moves to strike out the whole of the deposition of this witness as incompetent, inadmissible, immaterial and irrelevant.

HENRY SCHMIDT, M. D.

Attest: F. M. ADAMS, *Ex'r.*

JOSEPH WEBER, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?

A. Joseph Weber; age, fifty-three; 674 Lexington; occupation, pharmacist.

2 Q. How long have you been a druggist?

A. For the last thirty-five or forty years. I never had any other business.

3 Q. How long have you known of the manufacture and sale of artificial vichy water in this city?

A. I have sold the artificial vichy water ever since I have done business in the city of New York. I have been in business for myself since 1867, and since that time have never sold any other except Schultz's.

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4 Q. Under what name was that water sold by you to the public?

A. Artificial vichy; charged siphon.

By Mr. JONES:

5 Q. Do you mean to say that is the name applied to it; artificial vichy?

A. That is it; artificial vichy; nobody ever buys it for anything else.

By Mr. KNAUTH:

6 Q. How is this artificial vichy asked for by the public when they come to your drug store?

A. A siphon of vichy, usually.

7 Q. They ask usually for a siphon of vichy?

A. Yes, or Schultz's vichy.

8 Q. Then you furnish them with artificial vichy?

A. Then we furnish them with a siphon of Schultz's vichy.

9 Q. That has always been your practice?

A. Yes; it must be with me, because we handle the two; we handle the imported vichy and the artificial, or Schultz's.

10 Q. How is the imported vichy asked for in your store?

A. "Imported vichy," always; "A bottle of imported vichy."

11 Q. So unless a customer demands specifically the imported vichy, you would assume that he wants the artificial vichy?

A. That is it.

12 Q. And that has been the common practice for all these years?

A. At least in my neighborhood; yes. If any one wants the imported vichy he says so, "I want the imported vichy;" and
160 it comes done up in a different shape entirely, not in siphons; it comes done up in wine bottles, or something like that.

13 Q. When you see the name vichy printed on a siphon or bottle unaccompanied with anything else, would you take that water to be a natural or artificial water?

Objected to as incompetent.

A. If I could see the name printed on the siphon I would certainly take it for the artificial water.

14 Q. Do you ever drink any vichy yourself?

A. I do; yes.

15 Q. Do you go to soda fountains to drink it?

A. Yes.

16 Q. How do you demand it?

A. As vichy.

17 Q. What do you expect to get then?

A. You expect to get aerated water, artificial vichy water.

18 Q. An artificial water?

A. Yes, certainly.

19 Q. And not natural?

A. Nobody expects to get a natural.

20 Q. Is that the practice among the public, so far as you know?

A. Yes, sir.

21 Q. That has always been the case?

A. Always the case.

22 Q. Do you know what the reputation of Carl H. Schultz, who is now deceased, was as a manufacturer of mineral waters?

A. O K always; always had the best reputation for manufacturing the purest waters.

23 Q. Do you keep his waters in stock?

A. Always, yes.

24 Q. Have you ever tried the natural vichy water yourself?

A. I don't think I have ever tasted it.

25 Q. Do you sell much of it?

A. The natural?

26 Q. Yes.

161 A. Perhaps on an average half a dozen bottles a month; not more than that.

27 Q. And of artificial vichy water how much do you sell?
A. About 40 or 50 or 60 bottles a day. That is a table water, you know, with most people; especially seltzer; seltzer and wine, you know.
28 Q. Is it also prescribed by physicians?
A. Also prescribed by physicians; yes.
29 Q. How is it prescribed by physicians?
A. A siphon of Schultz's water; Schultz's vichy, or Schultz's seltzer, whichever it is.
30 Q. Do they usually suggest Schultz's?
A. Yes. Sometimes they say hygienic vichy, but Schultz's seems to be the favorite.

Direct examination closed.
No cross-examination.
Complainants' counsel moves to strike out the whole deposition of this witness on the ground that the same is incompetent, irrelevant, immaterial and inadmissible.

JOSEPH WEBER.

PETER HOYKENDORF, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?
A. Peter Hoykendorf; age, 50; 636 Park avenue; occupation, druggist.
2 Q. How long have you been a druggist?
A. Since 1864.
3 Q. Always in the city of New York?
A. No; since 1872 in the city of New York.
4 Q. And before that where were you?
A. In Denmark, Europe.
5 Q. How long have you been acquainted with the manu-
162 facture and sale of any artificial waters, and among them vichy water?
A. As long as my experience in the drug business has been.
6 Q. You knew such artificial mineral waters in Denmark?
A. Yes, sir.
7 Q. Were they dispensed there by druggists?
A. Not so much by druggists, I believe, as by trades, like what we would call here delicatessen.
8 Q. Mineral-water dealers?
A. Mineral water in bottles is sold in drug stores, not siphons.
9 Q. Was it recognized as a legitimate industry to manufacture and sell such mineral waters?
A. It was.
10 Q. Under what name were those mineral waters sold?
A. They were sold in Denmark particularly under the name—

the principal one, like Schultz's here, was Rosenborg. Schultz got his first education in the business right there.

11 Q. What kind of waters were there sold?

A. Imitations of all the natural waters, just like here, vichy, seltzer, Carlsbad, kissingen and innumerable others.

12 Q. And under what names were these specific waters sold; for instance, an artificial or imitation vichy?

A. I think they were sold simply under the name of vichy. I believe, as far as my recollection goes, that they were specified to imitate the particular brands of vichy, like Celestin, Grande Grille and Hauterive.

13 Q. Have you been in any other parts of Europe where you found this to be the case or only in Denmark?

A. That is all.

14 Q. Now, coming to the United States, how long have you known of the manufacture of artificial waters by Mr. Schultz?

163 A. Since the day I went to work in the drug business here, since 1872.

15 Q. Have you sold his waters since that time?

A. Yes, sir.

16 Q. Have you sold any artificial vichy water coming from his establishment since that time?

A. Yes; vichy with the others.

17 Q. How is that water commonly demanded?

A. A siphon of vichy; a siphon of seltzer; a siphon of kissengen; a siphon of carbonic, and oftentimes specifying Schultz's; sometimes without that specification, because they know I do not keep anything but that.

18 Q. Do you also sell any natural vichy water?

A. I do.

19 Q. How is that demanded?

A. They ask for the imported, generally.

20 Q. When a person comes to your drug store and demands some vichy water, what do you furnish him, natural or artificial?

A. Vichy water to take away with him or to drink on the premises?

21 Q. Simply when he comes and demands vichy water?

A. I ask whether he wants to drink it here, wants a glass of it, or wants a siphon of it, or wants the imported.

22 Q. Suppose he demands a glass of vichy water, what do you furnish him?

A. Artificial water.

23 Q. From the fountain?

A. Yes, sir.

24 Q. And when he demands a siphon of vichy?

A. It is Schultz's vichy.

25 Q. You furnish him Schultz's?

A. Yes, sir.

26 Q. And when he demands a bottle of vichy?

A. Then I get suspicious and ask him whether he wants the imported, and he tells me.

27 Q. So you furnish the imported or natural vichy only when it is specifically demanded by the customer?

164 A. Yes, sir.

28 Q. Do you know whether that is the common practice of druggists here?

A. Usually, because it would be a waste of time to bring out the imported when we knew beforehand that the customer did not want it. He wants the artificial or siphoned water.

29 Q. Has the word "vichy" here become a general term for a carbonated alkaline water, as seltzer means an artificial water slightly salted?

Objected to as calling for a conclusion of the witness, also as incompetent.

A. Yes.

30 Q. Is it manufactured by numerous manufacturers?

A. I believe so; yes.

31 Q. And always sold as vichy?

A. Yes, sir.

Direct examination closed.

No cross-examination.

Complainants' counsel moves to strike out the whole deposition of this witness on the ground that it is inadmissible, incompetent, irrelevant and immaterial.

PETER HOYKENDORF.

Attest: F. M. ADAMS, *Ex'r.*

THOMAS LATHAM, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?

A. Thomas Latham; age, 44; place of business, 1309 Third avenue; occupation, druggist.

2 Q. How long have you been a druggist?

A. You mean altogether, including my apprenticeship and my whole career?

165 3 Q. Yes.

A. About 28 years.

4 Q. Where did you start in that business?

A. I had a small, preliminary start in England, the country of my birth, but it was a brief period. Most of that twenty-eight years has been spent in the city of New York.

5 Q. How long have you known of the manufacture and sale of an artificial vichy water in this city?

A. Since 1870, about.

7 Q. Do you sell it yourself?

A. Yes, sir.

7 Q. Under what name is that artificial vichy water sold by you to the public?

A. At present it is labeled "artificial vichy," but it is only very recently. For many years it was simply labeled "vichy, manufactured by Carl H. Schultz," or other maker, as the case might be.

8 Q. When a person demands vichy at your drug store, what do you furnish him?

A. That depends. If he simply asks me for vichy and approaches the counter I presume he wants to drink a glass, and I furnish him artificial vichy which is contained in a fountain manufactured by myself. But I usually make further inquiry as to whether he wants a siphon or—that is about as far as it goes; "Do you want to drink it here, or do you wish to take it home."

9 Q. You always furnish him an artificial water?

A. Yes, sir.

10 Q. Do you ever sell any natural vichy water in your drug store?

A. I do; yes.

11 Q. How is that demanded by your customers?

A. That is generally either prescribed by physicians or demanded specially in specific terms by the customer.

12 Q. When it is prescribed by physicians how is it prescribed so as to indicate to you that it is the natural water?

166 A. It is generally prescribed "imported vichy," indicating the particular spring that is desired, giving the name of the particular spring that is desired.

13 Q. And when the customer does not bring a prescription and demands it simply by word of mouth, how does he describe it?

A. There are some customers who demand imported vichy, those who have traveled in Europe and have become acquainted with the natural springs; they ask for imported vichy; and some of the rather better educated people are also acquainted with the fact that the springs exist in Europe; but rarely, very rarely.

14 Q. How does the sale of that natural vichy water at your store compare with the sale of artificial vichy in extent?

A. Quite insignificant.

15 Q. Has that always been the case in your experience here?

A. That has always been the case.

16 Q. Do you think that anybody among your customers would be deceived by your selling them artificial water in answer to a demand for a bottle or siphon of vichy simply?

Objected to as incompetent, inadmissible and calling for the conclusion of the witness.

A. In my experience it is common to ask for a bottle, meaning a siphon. Many illiterate people do not know the use of the word siphon; they say a bottle, giving it the term applied to a glass vessel.

They say a bottle of vichy, meaning a siphon of vichy. The better-educated people indicate a siphon specifically.

17 Q. When you furnished them with a siphon of artificial water in answer to such a demand, do you think that you are doing an honest business?

Objected to as incompetent.

A. I do; yes.

18 Q. Do you also sell seltzer water or selters water in your drug store?

167 A. Yes, sir.

19 Q. Is that artificial or natural?

A. We sell artifical and natural.

20 Q. How is the natural selters water demanded?

A. Very small.

21 Q. In what manner is it distinguished?

A. It is asked for as imported selters, being packed in stone jugs. That is mostly asked for by Germans.

22 Q. Is that always demanded specifically as the natural or the imported?

A. Yes, the customers lay stress upon the fact of wanting the imported in stone jugs. That is a very limited class of purchase. Its sale is very small.

23 Q. Do you know what the reputation of the deceased Carl H. Schultz was as a manufacturer of mineral waters in this city?

A. First class.

24 Q. Do you keep his waters in stock?

A. Yes, sir.

Direct examination closed.

No cross-examination.

THOMAS LATHAM.

Attest: F. M. ADAMS, *Ex'r.*

Complainants' counsel moves to strike out the whole of the deposition of this witness as inadmissible, incompetent and immaterial.

CHARLES L. FINCH, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?

A. Charles L. Finch; age, 51; occupation, druggist; store at 1654 First avenue or Eighty-sixth street and First avenue.

168 2 Q. How long have you been a druggist or connected with the drug business?

A. I went into the drug business when I was 16 years of age. I have been in my place of business for myself about 18 years.

3 Q. Where did you start first?

A. The same place where I am now.

4 Q. In the city of New York?

A. Yes; in the city of New York.

5 Q. How long have you been acquainted with the manufacture and sale of artificial vichy water?

A. I have been acquainted with the sale ever since 1870, that is, if you mean since I have been a clerk in a store as well as being proprietor. I have been acquainted ever since 1870—28 years.

6 Q. Have you sold it yourself?

A. I have sold it as a clerk and since I have been in business for myself I have sold it since 1880.

7 Q. You have continuously sold it at your store?

A. Yes, sir.

8 Q. How is this artificial vichy water demanded by your customers?

A. They simply come in and say to me they want a siphon of vichy or a bottle of vichy.

9 Q. And what do you furnish them then?

A. The artificial vichy.

10 Q. Do you also sell the natural vichy?

A. Occasionally.

11 Q. How is that demanded at your store?

A. In my store they generally come in and most always specify the word "imported," or else they give me to understand by some other language that they want the imported.

12 Q. Do you mean they always specify?

A. They always specify or in some other way give me to understand that they want imported vichy; something different from the ordinary siphon or bottle vichy. That is the experience I have had in my store.

169 13 Q. What, according to your understanding, is the meaning of the word vichy as applied in this community to mineral waters?

Objected to as incompetent and calling for the conclusion of the witness.

A. If a person comes into my store and says he wants a bottle of vichy or a siphon of vichy, I instantly go to where my Carl H. Schultz water is kept and hand him out a siphon of vichy. I do that probably from force of habit. I have noticed if people want imported vichy they always ask for a special spring, or "Have you imported vichy?" or give me to understand that they want the imported vichy.

14 Q. You are always trying to hand your customer that which you suppose he desires to get?

A. If a person comes into my store and say they want a bottle of vichy or a siphon of vichy, no matter whether they use the word bottle or siphon, I, without any further parley in regard to the matter, go right and hand them a siphon of vichy.

15 Q. Do you ever drink vichy yourself, or demand it at somebody's else place?
A. Once in a while I do, yes.
16 Q. And drink it?
A. Yes, sir.
17 Q. How do you demand it?
A. If I am downtown, for instance, and am thirsty, I go into Hudnut's or any of those places, and ask for a glass of vichy, and I expect to get artificial vichy water drawn from the fountain.
18 Q. So when you demand it yourself you expect to get the artificial?
A. Yes, sir.
19 Q. When you want to get the natural vichy, how do you demand it?
A. I never have had occasion to demand it. I have been in France, of course, but I never asked for vichy water.
20 Q. Have you known Carl H. Schultz, deceased, or about his manufacture?
170 A. No; I simply know that I keep his water. That is the only water I do keep.
21 Q. Do you know the reputation of his waters?
A. Yes, sir.
22 Q. What is their reputation?
A. First class.
23 Q. Always has been?
A. Yes, sir.
24 Q. Is that the reason why you keep these waters?
A. Yes, I think I rather lay special stress upon that fact. I know I charge twelve cents a siphon in my store, while some of my neighbors charge ten for other manufacturers, and I always thought that Charl H. Schultz's water was a better grade of water than the ordinary manufacture.
25 Q. Artificial vichy water is also made by other manufacturers here, is it not?
A. Yes, sir; anybody can make it.
26 Q. A good many of them?
A. Anybody.
27 Q. What do you mean by anybody?
A. I mean any druggist that goes into the drug business and has a soda fountain, if he wants to sell vichy out of his fountain he can make up the solution himself and put it into a cylinder holding five or ten gallons of water and charge it with carbonic-acid gas and sell it out of his fountain as vichy.
28 Q. Is that a common practice with druggists?
A. I could not say. I know he can do it.
29 Q. Do you know whether it is done?
A. I know it has been done.
30 Q. How is this water sold at the fountain; is the fountain labeled in any way?

A. No; simply sold as vichy water.

31 Q. Is there not a label or shield indicating whose vichy?

A. Simply the word "vichy." I don't know that it is absolutely necessary; a man may have in his fountain two or three faucets; it is not necessary to label them at all. He may have one for
171 the plain soda water; he may have one for his geyser water, from Saratoga; he may have another which he takes artificial vichy through; it is not necessary to label them that way.

32 Q. I mean what is the common practice?

A. I think the ordinary practice is not to label them.

33 Q. Have you seen such labels on fountains?

A. Yes, I have seen them.

34 Q. Labels with "vichy" on them?

A. Yes, sir.

35 Q. They are always artificial waters dispensed from fountains, or are they also natural?

A. I would suppose—I don't know, but I would suppose, that would be my natural inference, that they are artificial water.

36 Q. Have you a soda fountain?

A. Yes, sir. I do not run it at all, but I have run it. At the present time I am not running it.

37 Q. Do you dispense any vichy water from it?

A. Yes.

38 Q. Artificial?

A. Artificial.

39 Q. Is the soda fountain labeled?

A. Do you mean the word "vichy" over it?

40 Q. Yes?

A. No, sir.

Direct examination closed.

No cross-examination.

Complainants' counsel moves to strike out the whole deposition of this witness on the ground that the same is incompetent, irrelevant and inadmissible.

CHARLES L. FINCH.

Attest: F. M. ADAMS, *Ex'r.*

Adjourned to Tuesday, January 25, 1898, at 2.30 p. m.

172 NEW YORK, *January* 25, 1898.

Met pursuant to adjournment.

Present: Counsel as before.

HENRY A. CASSEBEER, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?

A. Henry A. Cassebeer, Jr.; age, fifty-four; residence, 205 West Seventieth street; occupation, apothecary.

2 Q. How long have you been an apothecary?

A. I was apprenticed in 1860.

3 Q. And have you since that time been an apothecary in the city of New York?

A. Yes, always have been. I have been traveling some.

4 Q. You were domiciled here?

A. Yes; my domicile was here, that is, in the State of New York. I lived in the country a great deal. My business was always in New York.

5 Q. Where is your drug store situated?

A. 255 and 257 Columbus avenue, and Madison avenue corner of Seventy-fifth street.

6 Q. Do you know an artificial mineral water called vichy?

A. Yes, sir.

7 Q. How long have you known such a water?

A. Ever since I have been apprenticed; even before.

8 Q. How long before, if you can remember?

A. Perhaps one or two years. I cannot tell exactly that. I was a very young boy then.

9 Q. Have you sold it and do you still sell it?

A. I have sold it and still sell it.

10 Q. Do you know where it comes from?

173 A. Made here in America, the artificial.

11 Q. Is it made by any one particular manufacturer or by several?

A. The one I sell?

12 Q. No, I mean generally?

A. Made by many. Nearly every mineral water manufacturer makes it.

13 Q. Has that been the case ever since you have been an apothecary?

A. No, sir.

14 Q. How was it in the beginning?

A. My father first made some in 1860. At that time the son of the originator, or the man who first analyzed mineral waters and gave directions for preparing them, a man by the name of Struve, a Russian, a Russian-German, I think he was—his son came to America and was at our house very often, and he wanted to induce my father to go into the manufacture of mineral waters at that time. We made some, but the demand was very limited; it was too bothersome to make it in our store, so we had a man by the name of Schnackenberg—I don't know his first name—in Court street, who made soda water, &c., to prepare it for us, and we were his sole agents here in New York at the time. Then after that we prepared some salts which we sold to the public and they were to be placed in what they called a gasateur; that is, in one part of it the salts containing carbonates were put, and in the other the acids were put, and when you turned it around the mineral water would come out. But the sale of the mineral waters was not great. In 1861, I be-

lieve, the end of 1861, the first siphons were sent over here from Paris, and there was a gentleman by the name of Jacques Schieb, who was here, had these sent over to him from France, with the French formula, at least the formula written in French, for making vichy water, and wanted to induce my father to go into the manufacture of waters in siphons. Shortly after that I believe Messrs. Schultz & Walker started their factory for making
174 artificial mineral waters in siphons, and ever since that date the trade has increased and increased in size. That is what I know about the history of it.

15 Q. Do you also know the natural vichy water?

A. Yes, sir.

16 Q. Have you ever sold it?

A. Yes, sir.

17 Q. How long have you known that water?

A. As long as I have been in the apothecary business, but I don't suppose you could find it only in our place—not anywhere else in New York at that time.

18 Q. Was your father's drug store a prominent drug store in New York?

A. Yes, it was the oldest drug store in New York, situated on Broadway between White and Walker.

19 Q. Did that water come in bottles or in siphons?

A. In bottles.

20 Q. Do you still sell it?

A. Yes, sir.

21 Q. Can you state how the sale of this natural vichy water compares in extent with the sale of artificial water, so far as your drug store is concerned?

A. There are four or five different kinds of vichy water. When a man comes and asked me for vichy water, I ask him what kind. I believe there are four or five different sources. If a man wants vichy water I always ask him what kind he wants.

22 Q. You mean when he demands the natural water?

A. Yes, sir.

23 Q. When a man comes to your drug store and demands vichy simply, without saying anything else, what do you give him?

A. I ask him whether he wants it in a siphon or wants it from the fountain, and if he is a man of means or intelligence, I ask him, "Do you want the natural or the artificial?" I wish to modify that; when a man asks for vichy and goes to the soda
175 fountain, he takes his five cents of vichy from the fountain.

24 Q. Then you expect that he wants the artificial?

A. Yes, certainly.

25 Q. When he calls for a siphon of vichy what do you suppose that he wants?

A. The artificial.

26 Q. Is there any advantage in serving a water like vichy from a siphon instead of from a bottle?

A. Yes, sir.

27 Q. What is the advantage?

A. From the siphon it is always fresh and sparkling, while from the bottle it is not. It is the carbonic-acid gas that the people want.

28 Q. Can you state what has built up the reputation of vichy water here?

Objected to as calling for a conclusion of the witness on facts not shown to be within his knowledge.

A. Without doubt the siphon business.

29 Q. Can you state to what extent artificial vichy water is sold at your drug store, as compared with the sale of the natural vichy water?

A. In money or in quantity?

30 Q. In whatever way you can state it so as to give us a conception of it?

A. Perhaps 1 per cent.—no, ½ of 1 per cent. of the natural to 99½ per cent. of the artificial; and certainly money is a different thing; that would be about 5 per cent.

31 Q. Is the natural vichy water more expensive than the artificial?

A. Yes, sir.

32 Q. When you see the name vichy marked on a siphon or bottle, without anything else, what do you understand the water therein to be, an artificial or a natural water?

A. Artificial.

176 33 Q. Is that understanding based on your experience in these matters?

A. My experience.

34 Q. Can you state what the name vichy, as used here in the United States, means as applied to a mineral water?

Objected to.

A. It means an alkali, aerated water or carbonated water.

35 Q. Is that the meaning which the public commonly applies to it.

A. The public don't know. It is very hard to say. What do you mean?

36 Q. I mean is that the general meaning as applied by the public to the word vichy here?

A. Shall I modify my answer?

37 Q. Just answer in whatever way the matter presents itself to you.

A. It means a water containing some carbonic-acid gas or some alkali; to perhaps 50 per cent. of the people it means that; and the other 50 per cent. of the people don't know themselves; they want something that foams.

Direct examination closed.

Complainants' counsel moves to strike out the whole of the deposition of this witness as inadmissible, incompetent and irrelevant.

Cross-examination by Mr. JONES:

38 X Q. You stated in your direct examination that there were several kinds of natural vichy?

A. Yes, sir.

39 X Q. Do you know them?

A. Yes, sir.

40 X Q. State them, will you?

A. Hopital, Grande Grille, Celestin, are some of them.

41 X Q. Hauterive?

177 A. Hauterive; yes.

42 X Q. Do you know the formula adopted in making this artificial vichy that you have spoken of?

A. Not by heart.

43 X Q. Do you know that it is the formula resulting from the analysis of the Grande Grille spring?

A. What is used at present, may I ask?

44 X Q. Yes?

A. I could not say. At that time, when I spoke about the original, we had the analysis of all these different springs. I did not refresh my memory to come down here at all. At that time Mr. Struve, the son of the originator of these artificial waters, had all these different formulas here. I believe I have got them today, the original formulas.

45 X Q. Do you know the formula that was followed in the manufacture of this artificial vichy?

A. Not by heart.

46 X Q. I mean of what spring?

A. We had Grande Grille, Celestin and Hopital, I think. At that time there were three that we made.

47 X Q. Who were they made by?

A. By Mr. Schnackenberg in Brooklyn.

48 X Q. Do you know how long he made them?

A. I think three or four years. He died then.

49 X Q. Do you not know as matter of fact that artificial vichy, as known and as it has been known, is an imitation of the Grande Grille spring?

A. No, sir.

50 X Q. You do not know that?

A. No, sir; I do not know that. What is used at present I do not know.

51 X Q. My question relates to what has been done in the past also. Did you ever know that the imitation vichy sold here was an imitation of the Grande Grille spring?

A. I never compared the formula, not lately; not in the last fifteen or twenty years.

178 52 X Q. Have you been dealing in Schultz's vichy?

A. I have.

53 X Q. Don't you remember that until a comparatively recent period he had it expressly stated on his label that it was Grande Grille?

A. I could not say.

54 X Q. You never observed that?

A. I do a very large business, and I don't look at every one of these labels. I only look at the word "vichy." I know my siphons and I know when I see "vichy" marked on them. Since you call attention to it, I think I have seen the word "Grande Grille" on them, but I would not swear to it. I think I have seen it.

55 X Q. Well, such is the fact, and it appears in evidence.

A. I beg your pardon. Grande Grille was one thing on it. It is three or four years ago, isn't it, when they put it down?

56 X Q. Certainly until that time.

A. Not before that, I think. Now I remember he put it down about three or four years ago.

57 X Q. Schultz?

A. Yes—or something of that kind. I can't say exactly whether it was Grand Grille or Hopital or Celestin.

58 X Q. In selling artificial vichy, then, you take no account of whether the imitation is the imitation of one spring or the other?

A. No, sir.

59 X Q. And you deal it out indiscriminately on call for vichy?

A. Yes, sir.

60 X Q. You don't do that with the natural mineral water?

A. No, sir.

61 X Q. Why not?

A. Because those people using natural mineral waters have them prescribed by physicians, or are people of more than ordinary intelligence.

179 62 X Q. You said something in your examination about their being people of means also, didn't you?

A. Yes, means and intelligence.

63 X Q. In other words, people able to pay for the natural vichy?

A. No, not so much that.

64 X Q. What do you mean by that?

A. I mean a man of more than ordinary intelligence, and who has a certain disease and he wants a certain effect from the water; then he asks for the different springs. It depends upon what the physician is prescribing for him. A very few come to my store and say, "I want the Celestin water," which is mostly used.

65 X Q. Will you tell me why in selling the artificial vichy water you do not exercise the same care?

A. Because the people do not know whether they are taking vichy or seltzer or anything else of that kind.

66 X Q. Is it a question of knowledge of the customer or the identity of the water that guides you in selling?

A. When a man comes and asks for vichy I give him what is sold to me as vichy by the mineral-water manufacturers. Vichy is more or less a generic name in the trade, artificial water.

Complainants' counsel moves to strike out the last part of the answer, stating that the term is generic, as not responsive to the question.

A. (Continued.) When they call for a vichy water they mean an alkali water charged with carbonic-acid gas. They know nothing about vichy; and I believe that ninety persons out of a hundred will go into a restaurant, if you give them vichy and give them seltzer, and no label on the bottle, there are very few who know the difference.

67 X Q. What did you say the name of this Frenchman was that brought over the formula?

180 A. Jacques Schieb. He was a man from Alsace. He was a diamond dealer down here in Maiden lane. He died about three years ago in Paris.

68 X Q. Why do you say that the artificial vichy built up the reputation of vichy in this country?

A. The word "vichy" built up this mineral-water business, or aerated or carbonated, carbonic waters, on account of being agreeable to taste. The people like to drink a water that is bubbly, that is a little alkaline, and that contains carbonic acid. If asafœtida had not that disagreeable effect they might have called it asafœtida just as well as what they call it, vichy.

69 X Q. In other words, the makers of this artificial vichy could have adopted another name?

A. Another name, and could have done the business.

70 X Q. Can you tell me why, in your judgment, they adopted the name vichy?

A. The vichy spring contains an alkali, and people needed some kind of corrective for their stomachs when they had been out in the evening, and that was the whole reason.

71 X Q. Do you mean to say that vichy waters themselves had no reputation at that time?

A. Only among the very few, and even among physicians very few knew anything at all about it before Mr. Schultz started it.

72 X Q. Do you know how long the vichy springs have been known and celebrated for their curative qualities?

A. Long before any of us can think of.

73 X Q. For a great many centuries?

A. Yes, many centuries.

74 X Q. Don't you think that the reason that the manufacturers of this carbonated water that you have described, and which they called vichy, adopted the term vichy, was in order to get some of the reputation of that spring?

A. No.

75 X Q. You don't think that?

181 A. That is hard to say. I think the people did not know anything at all about it. They did not know where Vichy was—in America. Even today I don't think one per cent. of the people who drink vichy water know where Vichy is.

76 X Q. I am not asking you what the people think about it; I am asking you about the object of the makers of it?

A. I think at that time it was the only spring that was known at that time, or was analyzed at that time, that contained an alkali, or an agreeable alkali.

77 X Q. And don't you think that the manufacturers appropriated the name of vichy for the purpose of giving to the artificial water the reputation of vichy water?

A. No, sir.

77 X Q. You do not?

A. No, sir; because they had no reputation here in America at the time. There was no reputation to take in America.

78 X Q. They had a reputation abroad, had they not?

A. They had abroad, yes; but only in France.

79 X Q. They did have a reputation?

A. Yes, in France.

80 X Q. Somewhere within the very narrow limits that you imagine, or know, they did have a reputation?

A. They did, yes.

81 X Q. Don't you think that the manufacturers of this artificial vichy, in appropriating that name, intended to borrow the reputation of the Vichy spring?

Objected to as immaterial and irrelevant, because the controversy in this case does not turn between a competition of the artificial waters and any reputation which the springs of Vichy enjoy, but between the trade of the bottled waters of the Vichy spring and the artificial waters.

182 A. Yes—well, I don't think but very few knew anything about what it was at the time.

82 X Q. I am talking of the manufacturer.

A. Do you mean at that time or now?

83 X Q. At that time, and now, for that matter?

A. The fact is that the man who made the first I don't think ever knew where the Vichy spring was; but Mr. Schultz was an intelligent and highly educated man, and he knew, and he may have done that; but the original man who made it, Schnackenberg, I don't think knew where Vichy was.

84 X Q. You don't mean to say that he did not know that there was such a place as Vichy?

A. He may have known that there was a place like Vichy, yes.

85 X Q. Don't you believe that these manufacturers of this artificial carbonated water in adopting this term vichy intended to imitate something?

A. They intended to imitate the Vichy spring.

86 X Q. And by using the name vichy they intended to borrow the reputation of the vichy water, did they not?

A. Certainly.

Redirect examination by Mr. KNAUTH:

87 R. D. Q. Did you, when you first made such artificial vichy water here in New York city, and sold it, intend thereby to compete with the bottled water of the Vichy spring which was here on the market and to enjoy the reputation of those bottled waters?

Objected to as immaterial and incompetent.

A. No, I did uot, as they were prescribed by physicians as artificial waters. It was known to be artificial water and prescribed as such.

Recross-examination by Mr. JONES:

88 Re-X Q. Would it be difficult for you to apply another name that would just as properly designate artificial vichy as the term vichy itself?

A. No, sir.

89 Re-X Q. It would not be difficult?

183 A. It would not be difficult.

90 Re-X Q. What term would you apply to it?

A. If I was a mineral-water manufacturer I might call it carbo-alkali water, or alko-carbo water. All these names are coined names.

91 X Q. And you do not think it was necessary to have called it and to still call it vichy in order to properly designate it?

A. I don't think so. At that time the people wanted artificial water, and it was called for as artificial water, and in that way the whole thing started. The physicians prescribed it. They did not want imported water; they wanted artificial water. That is the history of it. They wanted artificial water, and that is the way the artificial water was made. They thought Struve was a better chemist than nature itself.

92 X Q. I understand you are clearly of the opinion that it was not necessary to use the word vichy?

A. At that time, no. They could have forged any other name, at least found any other name they wanted; but the circumstances at the time were different than now.

HENRY A. CASSEBEER.

Attest: F. M. ADAMS, *Ex'r.*

HENRY J. SMITH, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?

A. Henry J. Smith; age, 54; I reside at Roselle, New Jersey; occupation, barkeeper at the Astor house.

2 Q. How long have you been a barkeeper?
A. Thirty-five years.
3 Q. And where—here in New York?
A. I have been twenty-six or twenty-eight years right on Broadway, in three hotels.
184 4 Q. In New York city?
A. Yes, sir. I have been ten years at the Astor house; I was ten years at the St. James, and five years at the Metropolitan.
5 Q. Do you know what vichy water is?
A. Oh, yes.
6 Q. What is it?
A. There are two kinds of vichy water, *French vichy and siphon* vichy.
7 Q. Are you selling them both?
A. Yes; always have.
8 Q. How long have you sold them?
A. I have sold siphon vichy since about 1863 or 1864, during the latter part of the war, when it first came about.
9 Q. Sold it over the bar?
A. Yes, sir.
10 Q. Sold it right along?
A. Yes, sold it ever since.
11 Q. If a person comes to you and demands some vichy, what do you understand him to want?
A. Siphon vichy. If they want French vichy they ask for it; but one who drinks siphon vichy, an ordinary drink of vichy, if I were to give them French vichy they would not take it; they would call it dead; it is still, it is not charged.
12 Q. Do you know how the taste of this artificial vichy compares with the natural?
A. Yes, it is very much alike after the gas is out.
13 Q. They are alike after the gas has escaped?
A. Yes, very much alike. While the gas is still in of course you can taste the carbonic-acid gas. It is not at all like it then.
14 Q. What do you understand your customers to want when they demand vichy?
A. Siphon vichy.
15 Q. Always?
A. Ninety-nine out of one hundred; more than that—999 out of 1,000, as in evidence, we don't sell a dozen bottles of French vichy a year.
16 Q. How much siphon vichy do you sell?
185 A. Siphon vichy, seltzer and carbonic water I use a hundred a day, maybe.
17 Q. Of all three together?
A. Yes, sir.
18 Q. Of these waters, carbonic, seltzer and vichy, which do you sell most of?
A. Carbonic.

19 Q. And of seltzer and vichy?

A. About the same. One does not answer the same purpose as the other. A great many mixed drinks are made with seltzer or vichy. You cannot use French vichy or German seltzer for that.

20 Q. Why not?

A. There is no gas in the water. Some people ask for a drink called gin fizz. Some will want it made of vichy water to make it fizz, others will want seltzer water to make it fizz, and a third party may want carbonic water to make it fizz, and you cannot make it fizz with German seltzer or French vichy, because that is flat.

21 Q. What do you understand the name vichy to mean here in this community as applied to mineral water?

Objected to as calling for a conclusion of the witness.

A. When I first went in the business such a thing as siphons were not known, and we had French vichy then. Then, if my memory serves me right, in fact I know it does, because in the early part of the war I was at the Eutaw house in Baltimore, and there was a party of Frenchmen there—for what purpose I have forgotten, or what they were doing—but there was a party of 12 or 14, and they stopped there a month or two and they used to come in with a little bottle about so high (indicating) holding a couple of ounces, we will say, of tablets, just as you get lithia tablets now, which I use in my family fountain; these were vichy tablets. I can recollect the directions on the bottle were that you put so many of those
186 tablets in a goblet of plain soda water, and that would be equivalent in strength to the vichy water or French vichy. They used to use these tablets in preference to using the genuine French vichy. I recollect Grande Grille was one of the names of one of the springs of bottled water. We used two; Grande Grille and one other. I don't know what the other was.

22 Q. When a person demands the natural or imported vichy at your bar, how does he demand it?

A. He asks for imported vichy, French vichy.

23 Q. Always?

A. Always asks for it.

24 Q. Has that always been the case?

A. That has always been the case since siphons have been in use, and I have ever used them.

25 Q. How long have siphons been in use?

A. In 1864 or 1865 I commenced to use them; just about the close of the war.

Direct examination closed.

Cross-examination by Mr. JONES:

26 X Q. Before the introduction of siphons, what would a call for a bottle of vichy at a bar bring forth?

A. French vichy. We had nothing else. From that time, at the

Eutaw house at Baltimore, we all the time had a bottle of these tablets, and if one asked for vichy water I would show them to them and ask them if they wanted them with soda water or the French vichy, and give them the choice, and nine times out of ten they would take the tablets; I presume on the same principle that I now use lithia tablets in preference to using Buffalo lithia water.

27 X Q. Before the introduction of tablets what would a call for vichy water produce?

A. I could not tell. They were coincident with me.

28 X Q. Were these tablets made from any natural spring?

187 A. I couldn't tell that at all. I have not the most remote idea.

29 X Q. You say they were introduced at the Eutaw house by some Frenchman?

A. They brought them in from a drug store on the corner. I presume the tablets were made in Baltimore.

30 X Q. You don't know anything about that?

A. If they were imported, of course, the labels would have been French, and there would have been some French on them; and, as I recollect it now—it is a great many years ago—I think they were made in Philadelphia. There was a great chemist in Philadelphia, whose name now escapes me, and I think they were made by him, and underneath that was the name of a local druggist in Baltimore.

Redirect examination by Mr. KNAUTH:

31 R. D. Q. They were called vichy tablets?

A. Vichy tablets.

HENRY J. SCHMIDT.

Attest: F. M. ADAMS, *Ex'r.*

EMIL ROHO, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation.

A. Emil Roho; age, 38; residence, 860 Tenth avenue; occupation, steward.

2 Q. Are you now the steward of the New York riding club?

A. Yes, sir.

3 Q. How long have you been in that position?

A. Five years.

4 Q. How long have you been in this country?

A. It will be eleven years in April.

188 5 Q. What have you been doing in this country before you became steward of the New York riding club?

A. Cook.

6 Q. And where?

A. Up in Delmonico's here, and I have been in the Hotel Albert, in Twelfth street and Broadway. I have been in several places.

7 Q. Where were you born?

A. In Alsace.

8 Q. In what city?
A. Muhlhausen.
9 Q. You were born in 1860?
A. Yes, sir.
10 Q. At that time Muhlhausen was a part of the French Empire?
A. Yes, sir.
11 Q. Have you ever sold any water known as vichy water here?
A. Up in the club, yes; we sell a good deal of vichy water.
12 Q. How does it come—in bottles or siphons?
A. In siphons.
13 Q. How long have you known of such vichy water?
A. I know it at home, at Alsace, vichy water, and I remember fifteen years back vichy water.
14 Q. Have you always seen it in siphons?
A. I couldn't tell you when I used to drink vichy. They used to give it to us in glasses, and I did not know where it came from.
15 Q. How is that water demanded, under what name?
A. I couldn't tell you.
16 Q. If anybody orders a glass of it, what does he say?
A. They used to say seltzer or vichy; that is all I know.
17 Q. They just used the term vichy?
A. Yes, sir.
18 Q. They don't say anything else?
A. No, sir.
189 19 Q. When you see the name vichy on a siphon, what do you suppose the siphon to be, a natural or manufactured water?
A. Manufactured water.
20 Q. Do you know where the water comes from which you sell in the club as vichy?
A. This that we sell now comes from John Morgan.
21 Q. Is he a manufacturer of mineral waters?
A. Yes, sir. Sometimes we use Carl Schultz's, too, but I think it is dear.
22 Q. Dearer than the other?
A. Yes, and they say it is better, they like it better, but they don't care much about it. You know how it is; some one or two gentlemen like to have it from Carl Schultz, but the rest of them don't bother where it comes from.
23 Q. They are satisfied with anything you give them that is marked vichy?
A. Yes, sir.
24 Q. Have you ever known of any place that is named Vichy?
A. I know it from Alsace.
25 Q. You know where Vichy is situated?
A. I heard it there, yes. I don't know where they make it. I have heard the name.

Direct examination closed.
No cross-examination.

EMIL ROHO.

Attest: F. M. ADAMS, *Ex'r.*

Complainants' counsel moves to strike out the whole of the testimony of this witness on the ground that the same is inadmissible, irrelevant and incompetent.

OTTO BRANDT, a witness called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state yeur name, age, residence and occupation?

190 A. Otto Brandt; age, 52 ; place of business, 287 Washington street, Newark, N. J.; occupation, manufacturer of mineral-spring waters.

2 Q. How long have you been a manufacturer of mineral-spring waters.

A. Since 1867.

3 Q. Where?

A. In Newark.

4 Q. Have you ever manufactured any artificial vichy water?

A. Yes, sir.

5 Q. How long have you manufactured artificial vichy water?

A. Since 1867.

6 Q. Right along through all these years?

A. Right along.

7 Q. Under what name do you sell this artificial vichy water?

A. As manufactured water.

8 Q. Do you sell it in siphons?

A. Yes, sir.

9 Q. What do you print on the siphons?

A. "Vichy water" or only "vichy."

10 Q. Does the label also contain your name?

A. My name.

11 Q. And your address?

A. My address.

12 Q. Is that the usual practice of manufacturers of vichy water in this country?

A. Yes, sir.

13 Q. How is that water sold to the public, under what name?

A. Everybody understands if you sell it in a siphon it is manufactured.

14 Q. I mean how is it commonly demanded by the public?

A. You mean how it gets to the public?

15 Q. No, under what name it is commonly demanded by the public?

A. Vichy.

191 16 Q. If a man goes to a hotel or to a drug store or to a bar, how does he call for it?

A. He calls for a glass of vichy water.

17 Q. That is the common term applied to it?

A. Yes, sir.

18 Q. Do you also manufacture other artificial waters?

A. Yes, sir.

19 Q. What other waters do you manufacture?

A. Seltzer, kissingen, and then we charge the carbonic-acid water.

20 Q. How does the manufacture of vichy water in your establishment compare in extent with the manufacture of other waters?

A. I guess it comes only a quarter less than seltzer.

21 Q. Is seltzer the most popular of your waters?

A. Yes, sir.

22 Q. And then comes vichy?

A. Yes, sir.

23 Q. Then comes what?

A. Carbonic, and then comes kissingen.

24 Q. When you commenced the manufacture and sale of artificial vichy water, was there any competition between that vichy water and the natural, imported vichy water in this market?

Objected to as inadmissible and incompetent, and calling for the conclusion of the witness.

A. I did not know that we had imported vichy in the market, because I went right away at the analysis from Hager.

25 Q. You did not know at that time that there was any?

A. I know the name Vichy water, the springs in France, only I never tasted the water and never handled the water, and the first time I tasted that water was yesterday morning.

26 Q. Before that you never tasted it?

A. Before that I never tasted it, because I call myself a
192 manufacturer and everybody knows what analysis I have been working at. I worked at the analysis of Hager.

27 Q. Who was he?

A. He was a chemist from Germany.

28 Q. Did you know any imported, bottled natural vichy water here at the time when you started your manufacture in 1867?

A. Not then; I did not know it then.

29 Q. You had not seen any such bottles here?

A. No, sir.

30 Q. You were not aware that there was such a water on the market?

A. No, not then.

31 Q. Can you state when you first became aware of any bottled natural vichy water being sold here?

A. I guess that was about three years ago.

32 Q. Do you remember the circumstances about it?

A. I have seen it in a drug store, in a window.

33 Q. Before that you had never seen the natural bottled vichy water here?

A. No.

34 Q. Nor anywhere in this country?
A. No.
35 Q. When you commenced the manufacture of artificial vichy water, did you employ an analysis, to manufacture your water after a given recipe or formula?
A. No, because I did not need it. My brother and myself have been in partnership then and we both have been druggists. We could work out the analysis right away; we needed nobody to instruct us. My brother was the manufacturer; he manufactured this personally. We had a very small business to commence with.
36 Q. How did you get that analysis of the vichy water?
A. It was in Hager.
37 Q. Is it a book?
A. Yes, sir.
38 Q. A book on chemistry?
193 A. Yes, sir.
39 Q. And you took it from that book?
A. Yes, sir.
40 Q. Do you know whether the same was done by other druggists at the time?
A. That I don't know.

Direct examination closed.
Complainants' counsel moves to strike out the whole deposition of this witness on the ground that the same is inadmissible, incompetent and irrelevant.

Cross-examination by Mr. JONES:

41 X Q. What spring at Vichy is your artificial vichy made in imitation of?
A. That I could tell you as soon as I am at home.
42 X Q. Could you tell if you heard me mention it? Is it the Grande Grille?
A. If you would allow me to telephone I could telephone to my foreman and he would tell me right off.
43 X Q. I wish you would telephone to your foreman.

The witness leaves the room to telephone to Newark, and returns.

A. Grande Grille.
44 X Q. You do not imitate any other spring at vichy?
A. No.
45 X Q. Do you put the name of the spring on the label?
A. No, sir.
46 X Q. Why not?
A. Because I am a manufacturer. It is manufactured water; it is not natural water; it don't come out of the spring.
47 X Q. It is manufactured vichy in imitation of the Grande Grille spring, is it not?

A. Yes, sir.

194 48 X Q. Then why don't you put on "Grande Grille"?

A. I never did.

49 X Q. Why don't you?

A. I had no necessity to, because I am a manufacturer; and my card shows that I am a manufacturer of mineral-spring water.

50 X Q. That is the only reason you can give?

A. Yes. I have got a sign over the door, "Manufacturer."

51 X Q. You are a manufacturer of imitation vichy water, are you not?

A. Not of vichy water alone. I am a manufacturer of mineral-spring waters.

52 X Q. But you manufacture vichy water?

A. Vichy and two or three different kinds else. There are plenty of books with these analyses.

53 X Q. When you manufacture an imitation vichy water of the Grande Grille spring, why don't you put on the true designation?

A. I have no necessity, and nobody asks me what spring it comes from.

OTTO BRANDT.

Attest: F. M. ADAMS, *Ex'r.*

Adjourned to Wednesday, January 26, 1898, at 2.30 p. m.

NEW YORK, *January* 26, 1898.

Met pursuant to adjournment.

Present: Counsel as before.

WILLIAM SCHMIDT, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. Please state your name, age, residence and occupation?

195 A. William Schmidt; age, 49; residence, 27 Broadway, Steve[illegible] house; occupation, dispenser of moist joy.

2 Q. Have you ever sold any mineral water?

A. Yes, sir.

3 Q. How long?

A. About 40 years.

4 Q. Here in the city of New York or elsewhere?

A. In the city of New York. I have sold mineral water for the last 22 years.

5 Q. Where is your place of business?

A. 231 Broadway, opposite the post-office

6 Q. You are conducting the business yourself?

A. Yes, sir.

7 Q. Previous to that time what were you doing?

A. I have grown up in this business. I have never done any other business in my life. I was brought up in the hotel business.

I went into the hotel business when I was nine years old, and I am 49 now. I have been in the business 40 years.

8 Q. Do you sell any vichy water?

A. Yes, sir.

9 Q. Also other mineral waters?

A. Yes, I sell all kinds.

10 Q. Please state what other kinds you sell?

A. Besides vichy I sell seltzer and carbonic. There are so many different waters that they are really too numerous to mention. There are about 50 different kinds. I don't know as it is necessary to call attention to all the waters that I have sold. I have sold apollinaris; I have sold Waukesha; I have sold Saratoga.

11 Q. That is enough. How long have you known of vichy water?

A. Ever since I have been in the business.

12 Q. What do you understand under the term vichy water?

A. Vichy water is simply water the same as any other, only the preparation is different; the ingredients are different from the carbonic and seltzer. They are prepared in a different way. They are not as free from what I should call iron as the carbonic,
196 for instance. A great many people object to vichy because it has a great deal of carbonated stuff in it, such as bicarbonate of soda and one thing and another. People object to it. They would rather take the plain water. Vichy is only used on special terms. Vichy is supposed to act on the kidneys, and it is drank a great deal with milk. You can make a lemonade out of it, or anything of that kind. Where there is one bottle of vichy used there are about 25 bottles of other stuff used.

13 Q. How do you sell the vichy water—in siphons?

A. Vichy is sold by the glass or in siphons. It is generally sold by the glass for five cents; or it is sold in a lemonade for ten or fifteen cents; and vichy and milk is sold for five or ten cents.

14 Q. Do you sell it also in siphons?

A. Siphons sometimes, but very rarely.

15 Q. Do you ever sell it in bottles?

A. No.

16 Q. How is this vichy water demanded of you; under what name or term?

A. It is called vichy water. A great many people call it mineral water. A great many people don't know the difference; they don't know the difference between seltzer and carbonic; they only go by the label.

17 Q. How do you get your vichy water; do you get it in siphons?

A. We get it in siphons.

18 Q. Always in siphons?

A. Yes, sir.

19 Q. How are the siphons marked?

A. Simply marked "vichy."

20 Q. Has that always been the case so far as you can recollect?

A. Yes, sir. There is only one little label put on, calling it vichy, so as to distinguish it from the others; the same as seltzer is labeled seltzer, and carbonic is labeled carbonic, and so on.

197 21 Q. Do you know whether this vichy water which you sell is a natural or artificial water?

A. It is an artificial water. It is made right here in New York.

22 Q. Have you always known it to be artificial water?

A. Always. I have never sold any other water. I never saw vichy water, to my recollection—I would not swear to that, but to my recollection I never saw vichy water excepting it was manufactured in this country and came in siphons—to the very best of my knowledge and recollection. I have never sold it any other way, that I am sure of. I might possibly have seen it, but I don't think so. The best of my recollection is, I have not.

23 Q. Is vichy water a popular water?

A. I have already stated that it is not near so popular. Where there is one vichy sold there are 25 of the other sold; so vichy water is not very popular, not so popular as the rest. Seltzer and carbonic are far more in demand.

24 Q. Do you mix vichy and carbonic in drinks?

A. Yes, sir. You could not use vichy with wine at all, and it is not so good with whiskey; it leaves an unpleasant taste and an unpleasant effect; carbonic and seltzer does not. The consequence is there is not near so much demand for vichy as for the other two kinds.

25 Q. Do you sell most of your mineral waters together with wine or some sort of liquor?

A. Yes. Sometimes we sell it plain. Vichy is taken mostly plain with milk, or made into a lemonade, but it is very rarely used with liquor.

26 Q. You have a well-known bar-room in this city, have you not?

A. Yes, sir.

27 Q. So that when one of your customers comes to your place of business and demands a glass of vichy you give him an artificial water?

A. Artificial water; yes, sir.

28 Q. And that has always been your practice?

198 A. I have not anything else to give them; the consequence is I could not give them anything else if they wanted it.

29 Q. And this has always been your practice?

A. Yes, always.

30 Q. And that goes back how many years?

A. Forty years. When I say forty years I might overestimate the time, because I have tended bar in Europe and I was not so familiar with the vichy that we used there at that time, because I was only a boy; I did not pay much attention to it; but for the last 35 years I have been in this country, and I have never used any other form.

31 Q. When did you first come to this country?
A. I came here between 1867 and 1868.
32 Q. And before that where were you abroad?
A. I was in Hamburg. I was born near Hamburg.
33 Q. Did you know of any vichy water there?
A. I heard of it, but I don't remember it now. I would not swear to it. I don't think I could say anything in regard to that; but since 1867 I know all about it, and I have never known any other water besides that.

Direct examination closed.
No cross-examination.
Counsel for complainant- moves to strike out the whole deposition of this witness as incompetent, irrelevant and inadmissible.

WILLIAM SCHMIDT.

Attest: F. M. ADAMS, *Ex'r.*

Adjourned subject to new notice.

NEW YORK, *January* 31, 1898.

Adjourned to Friday, February 4, 1898, at 11 a. m.

199 NEW YORK, *February* 4, 1898.

Met pursuant to adjournment.
Present: Edward K. Jones, for complainant-; J. L. Suydam, for defendant.

EMMA GOTTHEIL, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. SUYDAM:

1 Q. Please state your name.
A. Emma Gottheil.
2 Q. Your residence.
A. 169 West Ninety-third street.
3 Q. Have you traveled abroad considerably?
A. Yes, I have.
4 Q. Have you visited the natural vichy springs in France to any great extent?
A. I have been nine times there.
5 Q. During what years were those visits?
A. The first one was nine years ago. I have been six times in succession; then one year I did not go; then the year after I went again; and one year I did not go, and the year after I went—last summer.
6 Q. So that that makes in all nine times?
A. Yes, sir.
7 Q. Have you taken any particular note during your visits at the springs, of the methods adopted there in the bottling of this natural water?

A. Until four years ago the wells had no cover over them; they have now a glass cover over them, but until four years ago they did not have any; they were open; and I saw them bottle the water by putting—it is made of zinc, not a pipe.

8 Q. A sort of a sluiceway?

A. Yes, open; a thing like that (illustrating), with two borders on each side, and that is the way the water ran into the bottles.

9 Q. You mean that they had from the source of the spring
200 a zinc trough?

A. Yes, sir.

10 Q. With two sides, to conduct the water?

A. Yes, sir.

11 Q. And the upper part exposed to the air?

A. Yes, exactly.

12 Q. Entirely open?

A. Yes.

13 Q. Did you notice that this zinc trough was used at your last visit there, last summer?

A. Yes, I noticed that last summer.

14 Q. And that it is still left open, as you state, exposed to the air and the surroundings, the atmosphere?

A. Yes; exactly.

15 Q. You speak of up to the time, four years ago, that the springs were left entirely open to the air?

A. Yes; entirely open.

16 Q. Do you mean that there was no covering at all over the springs up to that time?

A. No.

17 Q. What do — mean by saying that there has been for the last four years a glass covering to the spring? Will you describe how the glass covering is arranged?

A. In the centre the water comes up, and over that they have put a glass cover, but the water that the patients drink and the water that goes in the bottles is conducted out from that glass into a faucet, and that faucet runs all the time, and that is the way it is bottled, and that is the way the people drink the water.

18 Q. When the water leaves the spring and goes through a faucet, does the water coming from the faucet run into that open zinc trough that you testified to before?

A. Yes; exactly. It is only the centre, where the water seems like boiling, that they have covered with a glass, only since four years. I have asked the reason and they told me that they
201 discovered that there were a good many microbes around the place, and that is why they closed up the centre.

19 Q. Does that glass cover the spring entirely, or is it just over the top of the spring?

A. It covers simply where the water comes out.

20 Q. It closes that entirely?

A. Yes.

21 Q. Closes the sides entirely?
A. Yes.

By Mr. JONES:

22 X Q. You mean it simply covers the orifice of the spring?
A. Yes, but where the people drink and where the water is bottled it comes through faucets that are exposed to the air; they are not covered at all.

By Mr. SUYDAM:

23 Q. How far from the source of the spring is the spot where the water runs into the bottles?
A. About four or five feet.
24 Q. And if I understand you right the distance between the source of the spring and the spot where the water is bottled, a distance of four or five feet, the natural water is exposed to the air and has no covering whatever?
A. No.
25 Q. And runs simply through a zinc trough?
A. Exactly.
26 Q. With its upper sides exposed, not covered?
A. Yes.
27 Q. When you speak of bottling the water at a distance of four or five feet from the source of the spring, do you know what method is adopted at the vichy springs for bottling the water?
A. What I have seen is a man just filling those bottles, putting them into a hand-cart and taking them to the establishment where they are corked, and etiquettes (labels) put on them.
202 28 Q. How are the bottles filled by this man that you refer to?
A. Just one bottle is put underneath that zinc, filled, and then put in square spaces just to hold the bottles.
29 Q. Arranged in the hand-cart—these square spaces?
A. Yes. He had them all filled on the floor and then he took every bottle and put it in a little hand-cart and when he had that cart filled he took the entire thing to the establishment.
30 Q. The water runs from the zinc trough right into the neck of each bottle; is that correct?
A. Yes, exactly.
31 Q. There is no dipper used and no vessel for filling the bottles?
A. No.
32 Q. The water runs right from this open zinc trough into the neck of the bottle?
A. Yes. Then they stood until the bottles were all filled.
33 Q. How long, from your personal observation, do the bottles remain standing around before they are taken to the establishment which you refer to?
A. I could not say quite exactly.
34 Q. Have you watched them a good many times go through this process?

A. Yes; but I have not been there all the time until the entire thing was finished.

35 Q. You mean you have never waited long enough to see them finish them?

A. No, but it took quite a while.

36 Q. What would you say would be the least amount of time that those bottles would stand there after he had filled them?

A. At least an hour and a half.

37 Q. The bottles when filled at the end of this zinc trough are corked, or not?

A. No, I did not see any bottles corked there.

38 Q. They are not corked?

A. No.

203 39 Q. Do you know from your own personal observation whether or not the bottles are corked at all until they arrive at the bottling establishment?

A. No, they are not corked, as I have asked and they told me they were taken to the establishment and there they were corked.

40 Q. Have you ever, within your own personal observation, noticed whether the bottles go in these hand-carts uncorked through the streets?

A. Oh, yes.

41 Q. You have seen them go uncorked?

A. I have seen them go, yes.

42 Q. What is the nature of the streets through which these bottles go uncorked to the bottling establishment?

A. The entire place of Vichy is like a big park with—will you call it avenues?—and the streets are sprinkled once a day, or twice a day sometimes when it is very hot, but sometimes they are quite disagreeable and dusty. They are not asphalted, neither are they paved.

43 Q. Have you driven, yourself, through the very streets through which these open bottles are taken?

A. Oh, yes.

44 Q. And you have found that considerable dust can arise, have you not?

A. Yes; Vichy is quite a dusty place.

45 Q. How far is the bottling establishment located from the source of the springs?

A. That depends upon what spring. The Grande Grille, for instance, from the establishment—it is a good walk for ten minutes, ten or fifteen.

46 Q. Would you say it was half a mile? How many ordinary city blocks would you estimate it to be?

A. I could not tell, but it is a walk of at least ten or fifteen minutes from the Grande Grille, which is the nearest.

47 Q. That is the nearest?

A. Yes.

48 Q. How is it with reference to the Hopital?

204 A. The Hopital would take about twenty-five minutes.

49 Q. A good walk for twenty-five minutes?

A. Yes; and the Celestin is quite a distance.

50 Q. How many minutes do you suppose it would take to walk there?

A. At least forty minutes.

51 Q. A good walk for forty minutes?

A. Oh, yes. The Celestin is quite a distance.

52 Q. Is it true with reference to all these three springs in Vichy, to which you have just testified, that the same conditions apply that you have already given?

A. Yes.

53 Q. As to the covering of the spring?

A. The Celestin is not covered at all.

54 Q. And it has not been for the last nine years, to your personal observation?

A. Yes; it has never been covered; but the Grande Grille and Hopital are covered.

55 Q. And is it true with reference to these last two that they were uncovered until four years ago?

A. Certainly.

56 Q. Is it true with reference to the Grande Grille and the Hopital that the water is drawn from underneath the covering through the open zinc trough?

A. Certainly.

57 Q. That is true with reference to both of them?

A. Yes.

58 Q. So that the water is exposed to the air before being bottled for at least a distance of four or five feet, as you estimate?

A. Yes.

59 Q. Is it true, with reference to the bottles being uncorked, that they are all taken from the three springs in that uncorked condition when filled?

A. I have asked the man who was filling them and that is
205 what the man told me. I asked where are those bottles finished, with the etiquettes that we see them when they are out of France; out of curiosity I asked him and he told me all that was done in the establishment.

60 Q. Have you ever been to the establishment? Are the public admitted?

A. Yes, you can go in; I have been a good many years ago, in the beginning when I went to Vichy, but really I did not pay very much attention. I have seen people there busy putting on etiquettes but I did not pay so much attention; but I know exactly where the place is and how far from all the wells it is.

61 Q. You know, at any rate, that the bottles when they are filled at these three springs to which you have testified, remain in an uncorked condition for a considerable length of time?

A. Yes, I have seen them pass through streets and I have seen them filled.

62 Q. You have seen them pass through the streets in an uncorked condition?

A. Yes, I have.

63 Q. And you know that they are corked in what they term the bottling establishment?

A. Yes.

64 Q. Will you state whether or not, in your opinion, there is any precaution taken on the part of the owners of the springs to protect the water in its uncorked condition?

Objected to as incompetent, irrelevant and inadmissible.

A. I cannot say that. I could not understand very well why they covered the wells, and why the water that they gave us to drink was exposed, when they have told me that they have discovered that there were so many microbes that hurt the people. I thought it very stupid that they covered the centre, and that the water that we drank and that which was bottled was exposed to the air.

65 Q. With reference to the Hopital and Celestin, is the
206 bottled water taken through streets similar to the street that the Grande Grille is taken through, to which you have already testified?

A. Yes.

66 Q. The same nature of street?

A. The same nature of street.

57 Q. The same dusty streets?

A. Yes; and the Celestin, being a very great distance from the establishment, is even, I think, the water which is the most exposed.

EMMA GOTTHEIL.

Attest: F. M. ADAMS, *Ex'r.*

No cross-examination.

Counsel for complainant moves to strike out the whole of the deposition of this witness on the ground that it is incompetent, irrelevant, immaterial and inadmissible.

Adjourned subject to notice.

207 Circuit Court of the United States for the Southern District of New York.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIÈRE de l'Etablissement Thermal de Vichy, Complainant,

vs.

LOUISE SCHULTZ, as Executrix of the Last Will and Testament of Carl H. Schultz, Deceased, Defendant.

In Equity.

Deposition taken in behalf of the defendant, *de bene esse*, under sections 863 *et seq.* of the Revised Statutes of the United States, before Clarence A. Hammett, Esquire, a notary public in and for the city and county of Newport, in the State of Rhode Island, at the residence of Dr. Wolcott Gibbs, No. 138 Gibbs avenue, in said city of Newport, in the district of Rhode Island, pursuant to the annexed notice, on Saturday, January the fifteenth, at 4 o'clock p. m.

There were present Edward K. Jones, counsel for the complainants, and James L. Suydam, counsel for the defendant.

WOLCOTT GIBBS, a witness called on behalf of the defendant, in rebuttal, having been first duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, does depose and say and follows:

Direct examination by Mr. SUYDAM:

Q. 1. What is your name?

A. Wolcott Gibbs.

208 Q. 2. Please state your age, residence and occupation?

A. Age, 75; residence, Newport, R. I.; occupation, chemistry.

Q. 3. Please state what your experience has been as a chemist?

A. I studied chemistry with Dr. Haire in Philadelphia, first about the year 1843; went abroad then to Berlin, studied with Raunnelsberg and Rosa, and then went to Giessen and studied with Liebig, afterward heard lectures in Paris, became professor of chemistry in the Free Academy in New York in 1849; was elected Rumford professor in Harvard university in 1863; resigned the professorship about eight years ago; have been working in my private laboratory ever since and am working there still.

Q. 4. Throughout the course of your experience have you ever had occasion to make analyses of mineral waters?

A. Am familiar with the processes, but have never made analyses with my own hands.

Q. 5. Is the chemistry of mineral waters organic chemistry or inorganic chemistry?

A. Inorganic chemistry.

Q. 6. Is inorganic chemistry the chemistry of mineral waters a difficult subject?

A. The analyses are difficult and tedious.

Q. 7. How does the chemistry of inorganic substances or bodies compare with the chemistry of organic?

A. More complicated and more difficult.

Q. 8. Your answer to the last question is made from a general view of the whole subject, is it not?

A. It is.

Q. 9. Is the chemistry of mineral waters a difficult subject, in your opinion as a chemist?

A. I have already replied to that question in part; the chemistry is simple enough but the analyses as stated already are tedious and difficult.

Q. 10. How is a chemical analysis of a mineral water made?

209 A. The analysis is divided into two parts; first is called the qualitative part of it, the determination of what substances are present; the second is the quantitive part, the determination of how much of each substance is present; both processes have been systematized and reduced to uniform rules as far as possible.

Q. 11. Could you in taking up the subdivision of qualitative subdivide the analysis under the heads of salts entering into the compound and the accompanying acids that enter into the compound?

A. Yes, I can do so, but there is sometimes difficulty in deciding with what base a particular acid is united, and with what acid a particular base is united; because different kinds of chemical combinations are possible under the circumstances.

Q. 12. In the course of your experience and study you have undoubtedly heard of the German Chemist Bauer?

A. I knew of a German chemist by the name of Bauer, by reputation.

Q. 13. Is the German chemist whom you recall the German chemist Bauer who studied with Struve?

A. I don't know; I do not know Struve; the name Bauer is a very common name in Germany; there may be more than one chemist of that name, but I know but one. Chemistry is so subdivided that a man may be very eminent in one branch and but little known to those pursuing other branches. I know there is a German chemist by name Bauer, but I do not know in what department he works.

Q. 14. Since when has the reproduction of natural mineral waters been undertaken?

A. I do not know.

Q. 15. Can you say within your personal knowledge how long back mineral waters have been produced artificially in this country?

A. Since some period prior to the year 1863.

210 Q. 16. Can you state from your experience whether or not the natural mineral waters can be reproduced artificially as a scientific and established fact?

A. I believe that they can, with substantially the same composition and properties as the natural waters.

Q. 17. This is true, is it not, with reference to a reproduction of the natural vichy waters?

A. I believe that it is, the composition of those waters being relatively simple.

Q. 18. It has been stated by witnesses for the complainants in this case that the reproduction of natural mineral waters is impossible by reason of the existence of organic substances in the same? What have you to say to that?

A. I do not know of any proof of the existence in any mineral water of any organic substance which would essentially affect the properties of the water. As a rule, at least, the quantity of organic matter found in mineral waters is very small, and frequently only a mere trace.

Q. 19. If an accurate analysis of the natural water has been made, can you state that an artificial water, made after such analysis, would be an actual reproduction of the natural water?

A. Yes; at least substantially so.

Q. 20. Is the carbonic acid that escapes from springs the same as the carbonic acid known to chemistry, and which is made artificially?

A. Certainly.

Q. 21. Is this true with reference to all of the other ingredients according to the analysis which was held out to the public by the late Mr. Schultz, formerly the defendant in this suit, as the ingredients which entered into the manufacture of his artificial vichy water?

A. Certainly. As to the ingredients, according to Bauer's anal-sis of Carl H. Schultz's vichy, as follows, potassium sulphate, *et cetera*, herewith appended:

211 *Carl H. Schultz's Vichy, Compounded After Bauer's Analysis.*

Potassium sulphate	20.404
Sodium sulphate	11.771
Sodium phosphate	0.422
Sodium chloride	57.878
Sodium bromide	0.013
Sodium iodide	0.003
Sodium carbonate	380.130
Ammonium carbonate	0.469
Calcium carbonate	25.003
Strontium carbonate	0.232
Magnesium carbonate	3.529
Iron and manganese	Traces
Alumina	0.078
Silicic acid	6.406

Q. 22. You were personally acquainted with the late Carl H. Schultz?

A. I was.

Q. 23. How far back did you first make the acquaintance of Mr. Schultz?

A. I think as far back as 1856, when he was an assayer in the mint in New York.

Q. 23. Have you a distinct recollection of the time when Mr. Schultz started in the business of manufacturing artificial mineral waters?

A. I can only say prior to the year 1863, when I removed from New York to Cambridge, Mass.

Q. 24. Was the late Mr. Schultz a chemist of some note himself?

A. I am not aware that he published any chemical papers, but from my personal intercourse with him I formed the opinion that he was an excellent chemist.

Q. 25. You recollect the introduction of the artificial mineral waters, including the artificial vichy water to be in or about the year 1862?

A. Cannot specify the date, but was prior to 1863.

212 Q. 25. What was the effect in the medical field as well as the chemical world upon the introduction of these artificial mineral waters?

A. Schultz was very speedily recognized among chemists as a manufacturer of extraordinary care and precision, but I cannot answer for his position with the medical profession at that time or the effects of the use of his preparations from a medical point of view.

Q. 27. Do you know whether or not the introduction of these artificial waters was an important addition to the chemical field in this country?

A. I am not prepared to say that it was.

Q. 28. Can you say that this introduction was an important addition to medicine?

A. I cannot, as I am not a practitioner of medicine.

Q. 29. You speak of knowing Mr. Schultz very intimately prior to 1863, and I ask you to state what you know of the accuracy and care of the late Mr. Schultz, exercised by him in the manufacture of his product at the time it was launched by him upon the public?

A. I know only from conversations I had with Mr. Schultz on this subject, and with Dr. Torry, an eminent chemist, much interested personally in Mr. Schultz's success; Mr. Schultz gave me a detailed account of the care which he took in putting into his artificial waters all the ingredients which were contained in the natural waters, without regard to the difficulty and expense of obtaining some of these, more especially of lithia, which at that time was very expensive and difficult to obtain in quantity.

Cross-examination by Mr. JONES:

X Q. 1. You mean to state that Mr. Schultz made good chemical imitations of the natural mineral water?

A. I do.

213 X Q. 2. You do not mean to state that his artificial mineral waters had and have the same effect as the natural mineral waters?

A. My belief is that they have.

X Q. 3. There have been several analyses of the Vichy springs, showing different results, have there not?

A. The waters of all the different Vichy springs have been analyzed. There is no difference in the general results as regards composition, but there are some differences in the proportions in regard to some of the ingredients in the different springs.

X Q. 4. Each of the different springs had been analy*sis*ed by more than one chemist, has it not, showing different results?

A. I suppose that the different springs have been analy*sis*ed by different chemists; my own information is chiefly derived from the analyses contained in a well-known French work, titled, Dr. Paul Labarthe, Eaux minerales et Bains de mer de France, published by C. Reinwalt et cie, Rue de Saints, Peres, year 1873. I am also acquainted with an analysis made by a German chemist by the name of Bauer, which is possibly more accurate than any of the older analyses, but it is not stated of which particular spring this analysis was made. New springs are constantly discovered at Saratoga which is a great natural basin; the same holds good for Vichy. It would be surprising if there were not differences in the chemical constitution of different springs.

X Q. 5. Please state whether there is not some active principle present in the natural water and not to be found in the artificial mineral water?

A. I know of none.

WOLCOTT GIBBS.

214 Circuit Court of the United States, Southern District of New York.

LA REPUBLIQUE FRANCAIS- ET AL.
vs.
LOUISE SCHULTZ, as Executrix, &c. } In Equity.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

Deposition of Dr. Enno Sander, for defendant, of St. Louis, in the State of Missouri (129 South Eleventh street), upon interrogatories, taken before Thomas L. Crawford, clerk of the United States circuit court at St. Louis, Missouri, and special commissioner appointed by the circuit court of the United States for the southern district of New York, in the above-entitled cause.

Dr. ENNO SANDER, of lawful age, being duly cautioned and sworn, to testify the truth, the whole truth and nothing but the truth, in answer to the foregoing interrogatories, doth depose and say:

Q. 1. What is your name, age, residence and occupation?

A. Enno Sander; 70 years; St. Louis; manufacturing chemist.

Q. 2. How long have you been a manufacturer of artificial mineral waters and where have you conducted such manufacture?

A. For over forty years in the city of St. Louis.

Q. 3. How long have you manufactured any artificial vichy water?

A. About the same length of time.

Q. 4. Under what name is the artificial vichy water manufactured by you sold to the public?

A. Under the name of Enno Sander's vichy.

215 Q. 5. Do you sell this water in syphons or also in bottles?

A. The water has been sold and is selling in bottles and syphons.

Q. 6. Please state what is contained on the labels used on your syphons or bottles, and whether the same description has always been used?

A. The labels bear the name of vichy, and that it is highly aerated; they are attached to this deposition and marked respectively Exhibits "A," "B" and "C." I have always used such labels to my recollection.

Q. 7. Is your water manufactured according to a certain analysis of one or more of the springs at Vichy?

A. It has been manufactured after Bauer's analysis of the Grande Grille springs.

Q. 8. Were you acquainted with the sale of any bottled natural vichy water in the United States at the time when you commenced your manufacture? If so, state to what extent you knew of the sale of such bottled water.

A. I do not recollect distinctly whether any vichy was imported at the time when I commenced manufacturing mine.

Q. 9. Was your water put upon the market as an artificial water? If yes, then please state in what manner you stated or indicated to the public that yours was a manufactured water?

A. My vichy water was put on the market as my product, highly carbonated, in half-pint and pint bottles, distinguished by my label from any other vichy.

Q. 10. Have you any knowledge of the manufacture and sale of artificial vichy water in European countries, and if so state what knowledge you have?

A. My knowledge of the manufacture of vichy in European countries has been obtained mainly from the publications of Struve and Soltman, who conducted large plants for the manufacture of artificial mineral waters all over Germany, in Russia and England
216 over fifty years ago and produced vichy for sale.

Q. 11. Are you acquainted with the character of the water emanating from the springs at Vichy?

A. I have never been at the springs of Vichy, but I know the composition of its solid ingredients from various publications, many of them emanated from the management of the springs, and I have handled what is called imported bottled vichy in litre bottles usually full of sediment and of no value.

Q. 12. Are you a chemist? If yes, state what studies in chemistry you have made?

A. I am a chemist and have studied the various branches of the science; practically I have exhibited my knowledge in reports of chemical analyses of minerals, ores, compositions, waters, &c., which have become well known all over the western country, and I have written articles on mineral waters which have been published in European scientific journals and translated in several languages.

Q. 13. State whether the water of any mineral springs such as the springs of Vichy remains the same, or undergoes certain changes, and what changes, when bottled and transported to transmarine countries?

A. When the water which circulates underground finds an outlet by which to escape, it becomes released of the pressure which is exerted upon it by the atmosphere, and the gases contained in it free or loosely combined with chemical substances are evolved. But as they are required for holding in solution certain substances, especially the earthy and metallic bicarbonates, a decomposition of these salts will take place and they become precipitated as insoluble monocarbonates which may carry with them some of the other ingredients. It is evident that the water cannot possess the same efficiency after it has lost those valuable ingredients. The sediment which occurs in all natural bottled waters except in those the water of which has been settled or filtered before being bottled, is the proof
of this assertion.

217 Q. 14. If atmospheric air is allowed to come in contact with the bottled natural vichy waters during the bottling operation, has this any influence upon the water; if so, what?

A. The answer to this question is included in the former.

Q. 15. State how far your artificial vichy water differs from the bottled natural vichy water as the same is sold in this market?

A. My vichy is totally different from the imported by its external appearance and by the intrinsic effects.

Q. 16. State what induced you to commence the manufacture of artificial waters and among them vichy water in this country?

A. Scientists have observed a long time ago the deterioration of mineral water when removed from their natural source. Their experience, together with the demand of the public and the physicians for good carbonated mineral waters have induced me to give close attention to this branch of chemistry. There is sometimes even danger in the use of such bottled waters as they become farther decomposed and produce a larger number of bacteriæ. The saline and alkaline waters are especially prone to the production of these animalculi, and from a French publication, entitled "Bacteriologie des Eaux Minerales de Vichy," &c., published at Paris in 1892, which gives the scientific investigations of the authors and proves the presence of large numbers of bacteriæ in the bottled waters from Vichy, I have taken much of my knowledge of Vichy's bacteriæ. I ask permission to present it here and have it marked for identification "Defendant's Exhibit Bacteriologie."

Q. 17. State what, if any, advantages are gained by the artificial reproduction of natural mineral waters at places far away from the springs?

218 A. Natural waters lose their efficiency when removed from their sources, while artificial waters manufactured under pressure of carbonic-acid gas and bottled without exposure to the atmosphere remain intact in all their ingredients, and therefore are to be preferred to any bottled natural waters.

Q. 18. What is the meaning of the word vichy as used in this country with reference to mineral waters consumed here?

A. Vichy means simply an alkaline water.

ENNO SANDER.

Circuit Court of the United States, Southern District of New York.

LA REPUBLIQUE FRANCAISE ET AL.
against
LOUISE SCHULTZ, as Executrix, &c.

Objection to proposed interrogatories and proposed deposition to Dr. Enno Sanders, a witness in behalf of the defendant above named, on the commission intended to be issued to the clerk of the circuit court of the United States for the eastern district of Missouri.

The complainants' counsel declines to propound cross-interrogatories to this witness, and objects to the proposed questions
219 and proposed deposition on behalf of the defendant on the ground that the same are incompetent, inadmissible, irrele-

vant and immaterial to the issues in this cause; and complainants' counsel desires this objection to be noted upon the deposition.

Dated New York, February 28, 1898.

JONES & GOVIN,
Solicitors for Complainants.

United States Circuit Court, Southern District of New York.

THE REPUBLIC OF FRANCE ET AL.
vs.
CARL H. SCHULTZ. } In Equity.

NEW YORK, *November* 17, 1898.

Appearances.

Rowland Cox, Esq., and A. S. Wolcott, Esq., for complainants.
Antonio Knauth, Esq., for defendant.

Defendant's counsel offers in evidence two letters written by defendant's solicitors, Briesen & Knauth, to the then solicitors for the complainants, Jones & Govin, dated March 5, 1892, and the
220 same are marked Defendant's Exhibits Settlement Letters, Nos. 1 and 2 respectively, with the date and the initials of the examiner.

Defendant's counsel also offers in evidence the answering letter of Jones & Govin, dated March 8, 1892, received in answer to the foregoing, and the same is marked Defendant's Exhibit Settlement Letter No. 3, with the date and initials of the examiner.

Complainants' counsel object to the letters on the ground that they are immaterial and irrelevant.

Defendant's counsel states that subsequently, about half a year after this correspondence took place, he received a communication from the complainants' solicitors, Jones & Govin, which *which* he is now unable to produce, to the effect, substantially, that their clients could not accept the proposition contained in the two letters of Briesen & Knauth.

It is stipulated that the foregoing statement of defendant's counsel be received with the same force and effect as if it had been duly testified to.

Complainants' counsel object to the foregoing testimony, and to all testimony having relation to any propositions of settlement, on the ground that it is immaterial and irrelevant.

Defendant's counsel also offers in evidence a printed book entitled "Ueber die Bereitung der Mineralwässer auf chemischem Wege in den Struve'schen Brunnenanstalten," printed at Berlin, 1841, by Julius Sittenfeld, and the same is marked Defendant's Exhibit Sittenfeld Publication, with the date and initials of the examiner.

Defendant's counsel offers in evidence an authenticated copy of a

judgment rendered by the civil tribunal of first instance, of the
221 department of the Seine, sitting at the Palace of Justice, Paris, dated January 19, 1881, entitled in the suit of Compagnie Fermière de l'Etablissement Thermal de Vichy against Compagnie Propriétaire des Eaux Minerales de Vichy, and also a translation of the same into the English language, and the same are marked Defendant's Exhibits Vichy Judgment, and Vichy Judgment Translation, respectively, with the date and the initials of the examiner.

MAURICE BLOCK, a witness called on behalf of the defendant, having been duly sworn, testified as follows:

Direct examination by Mr. KNAUTH:

1 Q. State your name, age, residence and occupation?

A. My name is Maurice Block; age, 27; I reside at 64 East Eighty-seventh street, city of New York, borough of Manhattan; I am an attorney-at-law, at present employed with Briesen & Knauth in the capacity of law stenographer.

2 Q. Have you ever used vichy water?

A. I have used that water for a number of years. I began to use it some ten or eleven years ago.

3 Q. Did you use it for your health?

A. I was advised about ten years ago to use it, by my physician, who recommended that I use this water in connection with his treatment for stomach troubles at that time.

4 Q. What did your physician prescribe to you to use?

A. He told me that with my meals I should take vichy water; that is, he directed me to get a bottle of vichy from my druggist.

5 Q. What did you do thereupon?

A. I went to my druggist and he handed me a siphon of the vichy water.

222 6 Q. Had you known that vichy water before?

A. I was quite familiar at that time with the siphon water; that is to say, the water contained in siphons, which I had known as vichy. I never heard of any other at that time. I did not expect to receive anything else then.

7 Q. And the druggist handed you a siphon of vichy water at your request?

A. He then handed me a siphon of vichy water; and that was always handed to me whenever I went to the drug store and asked for vichy water.

8 Q. Did you afterwards report to your physician what you had done with reference to the vichy water?

A. Yes I told him afterwards that I was taking the vichy water, and if I remember correctly he then recommended that I get Schultz' vichy water, which I did by ordering the water in quantities of half a dozen bottles at a time, and I kept on ordering them from Mr. Schultz for some five or six years, taking it continuously.

9 Q. When this water was prescribed for you, had you ever seen any natural vichy water in bottles or vessels of any kind?
A. I never saw any vichy water other than that sold in the siphons until I heard of the water in connection with this suit.

Direct examination closed.
Cross-examination waived.

MAURICE BLOCK.

Attest: F. M. ADAMS, *Ex'r.*

Adjourned subject to new notice.

NEW YORK, *December* 1, 1898.

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Met pursuant to notice.
Present: Counsel as before.
Defendant's counsel offers in evidence a translation of certain portions of Defendant's Exhibit Sittenfeld Publication, offered at the last session, and the same is marked "Defendant's Exhibit Translation of Sittenfeld Publication, Dec. 1, 1898, F. M. A., ex'r."
Complainants' counsel objects to the exhibit as irrelevant and immaterial, but makes no objection to it on the ground that it is incompetent.
Defendant's counsel offers in evidence a certified copy of registered trade-mark No. 5014, of the complainant Compagnie Fermiere, registered in the United States Patent Office on August 7, 1877, for mineral waters and salts, and the same is marked "Defendant's Exhibit Complainants' Registered Trade-mark, Dec. 1, 1898, F. M. A., ex'r."
Complainants' counsel objects to the exhibit as immaterial and irrelevant.
Defendant's counsel also offers in evidence a French text book on trade-marks, entitled "Traité des Marques de Fabrique," by Eugene Pouillet, second edition, published in Paris in the year 1883, the same being taken from the library of the New York Law Institute.
By agreement of counsel the marking of this exhibit is dispensed with.
Defendant's counsel also offers in evidence a translation of section 408 of said work, found on page 394 thereof, and the same is marked "Defendant's Exhibit Pouillet Translation, Dec. 1, 1898, F. M. A., ex'r."

224 Defendant's counsel also offers in evidence another French text book on patents, trade-marks, &c., entitled "Droit Commercial," by J. Bedarride, vol. 2, published in Paris in the year 1869, the same being taken from the library of the New York Law Institute.
By agreement of counsel the marking of this exhibit is dispensed with.
Defendant's counsel also offers in evidence a translation of a portion of said last-named work, being paragraph 790, found on page 434 thereof, and the same is marked "Defendant's Exhibit Bedarride Translation, Dec. 1, 1898, F. M. A., ex'r."

Complainants' counsel makes no objection to these exhibits on the ground of incompetency, but reserves the right to object to them hereafter on the ground of irrelevancy and immateriality.

Defendant's counsel offers in evidence a translation into the English language of such portions of "Defendant's Exhibit Bacteriologie, Tho. Lester Crawford, commissioner," as he desires to read in evidence at the hearing, and the same is marked "Defendant's Exhibit Translation of Exhibit Bacteriologie, Dec. 1, 1898, F. M. A., ex'r."

It is stipulated between the counsel for the respective parties that said translation is a sufficiently correct translation of the original exhibit or such parts thereof as it purports to reproduce in English, but may be corrected at any time previous to the final hearing by comparison with the original, and also that complainants' counsel may offer in evidence a translation of such other portions of said original as he may deem material.

Complainants' counsel objects to said exhibit as immaterial and irrelevant, but makes no objection on the ground of incompetency.

(Defendant rests.)

225 United States Circuit Court, Southern District of New York.

LA REPUBLIQUE FRANCAISE ET AL.
vs.
LOUISE SCHULTZ, Executrix.

Stipulation.

It is hereby agreed and stipulated between the respective parties in the above-entitled cause, by their solicitors, that the translations of answers, or portions of answers, contained in complainants' printed record of depositions taken in France, and shown in brackets on complainants' record, are correct translations of the original answers or portions of answers given, and that the translation marked "Mr. Chatel's translation" is a correct translation of the material parts of the following exhibits introduced in connection with the testimony taken in Paris, under the commission issued in this cause, to take the testimony of Charles Fere, &c., Exhibits A, B, C, G, H, I, R, S, T, U, V, W, Z, A A, B B and C C, subject to defendant's right to offer in evidence any translations of additional portions of such exhibits.

Defendant's counsel objects to these exhibits as immaterial and irrelevant, but makes no objection on the ground of incompetency of the exhibits.

And it is further agreed that these translations may be used at the final hearing of this cause with the same force and effect as if they were translations of the originals made by the sworn interpreter, Mr. Newton Eustis, at Paris, and returned with the answers to the interrogatories taken under said commission, and in connec-

tion with which said exhibits were offered, and that the said translation may be used at said final hearing, and in every way
226 treated of like force and effect as if duly offered in connection with said answers and as part of complainant's *prima facie* case.

It is further agreed and stipulated that the printing of the original French of the exhibits, of which the translation is herein referred to as Mr. Chatel's translation, may be dispensed with, and that the printing of all other exhibits, either in the French or the German language offered in connection with any depositions in this cause, may be dispensed with and the original exhibits used with like force and effect at the final hearing of this cause as if the same had been printed and made a part of the record herein.

It is further agreed and stipulated that the various books which have been offered in evidence by the defendant as Defendant's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, and also Defendant's Exhibits Sittenfeld Publication, Pouillet's Text Book, and Bedarride's Text Book, were printed and published on the dates which they bear respectively, and that the translations of portions therefrom offered in evidence by defendant are sufficiently correct translations of those portions, but may be further corrected at any time previous to the final hearing by comparison with the originals; and that either party may at any time before the final hearing of this cause offer in evidence any other portions of the book exhibits offered in evidence in this case by either party, and translation thereof, the same to be first submitted to the other side for comparison.

Complainants' counsel objects to each and all of the various book exhibits and translations therefrom offered by defendant's counsel in evidence, as immaterial and irrelevant, but does not object to them on the ground of incompetency.

Dated New York, December 6, 1898.

ROWLAND COX,
Complainants' Solicitor.
BRIESEN & KNAUTH,
Defendant's Solicitors.

227 REP. OF FRANCE *v.* SCHULTZ.

DEFENDANT'S EXHIBIT NO. 14, DECEMBER 17, 1897. F. M. A., Ex'r.

Handwoerterbuch der Chemie, by Liebig, Poggendorff and Woehler, edited by Dr. Hermann Kolbe, 1851, page 321. (Translated.)

Whether the constitutions, *i. e.*, the manner in which the single constituents are combined with each other, be the same in artificial waters, as it has been ascertained by the analysis of the natural waters, naturally cannot be decided with any better success, than we are able to assert that the salts and substances in the natural waters

are grouped therein and arranged as they have been grouped and calculated from the analysis. For the preparation of these waters we possess only the results of the analysis, which indicates the proportions in which the respective compounds are to be dissolved in water, while it is left to the salts to group themselves in this solution according to their respective affinities and peculiarities, and to constitute themselves into a whole. If, as a matter of course, we are allowed to draw conclusions from the results of the analysis as to the constitution, and also from the analogy of the results of two analyses to the analogy of the constitution of two waters, we may well be entitled to conclude, that an artificial water contains its constituents in the same manner and grouping as a natural one, for the reason that the analysis made of the former, whereby the same method was employed as by the analysis of the latter, yielded results in all parts identical.

To substantiate this, an artificial "Friedrichshaller Bitterwasser," prepared according to the results of an analysis by Liebig, was used,
which, with respect to its physical properties, was equivalent
228 to the natural water. It was then analyzed in the same
manner as the natural one, analyzed by Liebig.

If we may extend our experiences in this case upon all others, we must conclude that the constitutions of artificial waters must be the same as that of the natural waters.

FRANCE *vs.* SCHULTZ.

DEFENDANT'S EXHIBIT NO. 15, DICK'S RECEIPTS (1872).

Page 413. * * *

4455. *Vichy Water.*—Sulphate of potassa, 2 drachms; sulphate of soda, 4 scruples; phosphate of soda, 25 grains; common salt, 6 drachms; bicarbonate of soda, 5¼ ounces; carbonate of ammonia, 10 grains. Mix. Add water, ½ gallon. Let it stand half a day; filter; add 10 gallons water and charge with gas.

4456. *Vichy Water.*—Bicarbonate of soda, 1 drachm; muriate of soda, 2 grains; sulphate of soda, 8 grains; sulphate of magnesia, 3 grains; tincture of muriate of iron, 2 drops; aerated water, 1 pint. Borvault directs 75 grains of bicarbonate of soda, 4 grains of chloride of sodium, ⅓ grain sulphate of iron, 10 grains sulphate of soda, and 3 grains sulphate of magnesia, to a pint of water. By adding 45 grains (or less) of citric acid, an effervescing water is obtained.

4457. *Vichy Water.*—Soubeiran, relying on the analysis of Longchamps, imitates vichy water by the following combination: Bicarbonate of soda, 135 grains; chloride of sodium, 2½ grains; crystallized chloride of calcium, 12 grains; sulphate of soda, 11½ grains; sulphate of magnesia, 3¾ grains; tartrate of iron and potash, ⅓ grain; water, 2 1/16 pints; carbonic acid, 305 cubic inches (10½ pints). Dissolve the salts of soda and iron in part of the water; dissolve and add the sulphate of magnesia, and then the chloride of calcium in the remaining water. Charge now with the carbonic-acid gas under pressure.

DEFENDANT'S EXHIBIT No. 25, DECEMBER 17, 1897. F. M. A., Ex'r.

Analytical Results Vichy Waters, as in First Column, Contain- in 100,000 Pints.

Name of water.	Total residue at 120° C.	Carbonate of soda.	The water's transient hardness expressed Ca CO_3.	Ca CO_3 in crust in bottle.	Total transient hardness as Ca CO_3.	Chlorine from aq. Cc.	Sulfuric acid, SO_3.	Nitrous acid.	Nitric acid by copperas test.	N_2 O_5 quantity.	Oxygen required to oxodize organic matter.	Color of conc. solution.	No. of microbes per CC.
1. Regnière St. Yorre	433.40	326.13	24.85	0.70	25.55	28 46	12.393	Trace	Very little		0.1880	Yellow	116,700
2. Hauterive Globe	446.60	331.19	21.35	0.95	22.30	28.03	12.565	None	Slight reaction		0.2614	Yellow	4,160
3. Grande Grille, 1896	512.00	377.73	28.15	1.25	29.40	37.63	15.380	Trace	Slight reaction		0.2138	Yellow	300
4. Grande Grille, 1897	525 15	379.96	29.25	0.65	29.90	35.74	14.556	None	Very faint		0.2534	Yellow	6,060
5. Celestins, 1892	393.75	234.05	62.10	1.15	63.25	25.44	14.385	Trace	Considerable		0.2296	Yellow	None.
6. Celestins, 1897	394.10	254.56	55.95	15.50	71.45	25.24	13.561	Considerable	Considerable	3.5521	0.2218	Light color	790
7. Schultz, artificial	507.70	380.75	29.35	.....	29.35	35.54	14.556	None	None		0.2296	Colorless	None.
8. Grande Grille, 1897	511.00	373.70	28.00	12.84	54.09	34.96	13.080	Considerable			0.1307	.....	.....
9. Hopital, 1897	532.90	381.07	41.25	0.40	27.60	34.68	14.62	Trace	Very faint		0.1188	.....	.....
10. Grande Grille, 1897	507.00	375.87	27.20	.....	.....	.....	.....	None	.....	.....	.....	.....	.....
11. Grande Grille, 1897	510.00	376.99	28.30	.....	.....	.....	.....	Trace	.....	.....	.....	.....	.....

THE SARATOGA VICHY SPRING COMPANY.

OLYPH 155

230 DEFENDANT'S EXHIBIT No. 26.

The Artificial Mineral Waters in Their Relation to the Natural Waters.

By

Dr. Hertz,

in Koenigsberg.

Berlin,

1830.

Printed and published by G. Reimer.

(Page 3.) Whoever knows the value of a cure by mineral waters, and has observed the same at the springs, will consider it natural that the appearance of the artificial mineral waters of Struve raised the desire in every physician who lived far from the natural springs to embody such potent medicaments to his store of medicines. A request made to Dr. Struve in the year 1825 to erect here a similar establishment, as it then existed only in Dresden, Berlin and Warschau, was kindly received and so promptly followed that already in the following summer my colleagues and myself obtained results in the newly erected establishment, which, although expected, were yet a surprise to us; and my conviction became more and more settled that this important invention of Struve, when perceived in its true value and used with understanding and circumspection, would not only furnish a substitute for the natural springs which would fufill all requirements, but would also take from the hands of single persons and put before the eye of the whole medical public the dogma of the effects of mineral waters, which until now was buried in prejudice.

231 DEFENDANT'S EXHIBIT No. 27.

General Treatise on Springs and Bathing for Patients.

By

Dr. August Vetter.

Berlin.

1840.

Published by Wilhelm Thome.

(Page 305.) Third chapter.

On the imitation of natural springs and Struve's establishments for the preparation and drinking of imitated waters.

(Page 310.) If mineral waters were the products of living organisms, like milk or sap, it might be impossible, now as well as for-

ever, to imitate them. But aside from the fact that such organisms cannot be shown, and that the facts which we know, and the observations which have been made, show conclusively a much more simple and apparent explanation of the origin of the springs, such a hypothesis has been at last and in the most effective manner disproved by the fact that they have been imitated, and that in spite of the great difficulties in the way to accomplish this purpose and in spite of the prejudices by which the possibility of success was denied, success has at last crowned the efforts of science.

As already mentioned, the needs of the sick led to these efforts. Since Plinius had first indicated the preparation of sea-water baths on land by dissolving salts, rough experiments for the formation of mineral waters had been repeated from time to time; they could, however, not lead to any result, because the constituent elements of the springs were not known.

* * * * * * *

232 When people tried formerly to bring this about by fantastic methods, and when later on it was attempted to reproduce mineral springs merely by the most prominent constituents of the originals, the reason of the failure of so many endeavors and experiments lay in the insufficient methods. The task was therefore to incorporate all the elements found in the water in such manner so that even the slightest element would find in the artificial mixture the same place as in the natural water.

It was left to the inventive genius of Struve to solve this problem successfully. We have seen already that the solution of a portion of the solid constituents depends upon the gaseous constituents of the mineral waters; that especially earth and metals are frequently found in combinations, from which they are at once precipitated when the gas escapes, and that this is the reason for the formations of mud and calcarious matter which are found at the springs. The invention to incorporate gases in the water was already made at the end of the last century; the perfection of the apparatuses necessary therefor, has in the course of time reached such a degree that one can determine with the greatest exactness the quantity of gas and the degree of pressure under which it is in the water. * * *

(Page 316.) Before the reproduction of the mineral waters had been invented it was necessary to use the nearest spring which could be reached, although it might be less effective, in all cases where it was impossible to reach a more distant spring. In consequence of this invention, however, the most distant springs could be used anywhere in the same manner as at the place of their origin; it was not necessary to use less effective waters with doubtful expectation, and it was made possible to turn at once to the strongest springs and those most effective for the disease in question. Nor was it necessary to fear that after a long and tedious journey the patient might be required to abstain from the use of a water

233 which might be found unsuitable for the patient, as the choice of the most different springs afforded the sure expec-

tation that one of them would prove to be suitable. "Who will deny," says Dr. von Koenen, "that in the Struves establishments the experiences about the effects of the waters often furnish more certain data than those made at the spring?"

(Page 319). The imitation is, as has been said before, an enterprise which requires great and continued attention in its execution, if the aim shall be reached to produce by art entirely the same water. This is now only done in the drinking establishments at Berlin, Brighton, Dresden, Kiew, Koenigsberg, Leipzig, Moscow, Petersburg and Warschau, which have been erected according to Struve's directions and according to his method, and are conducted by competent and conscientious chemists. It is probable that also the mineral establishments of Stockholm and Helsingfors, the former of which was erected under the direction of the renowned Berzelius, follow conscientiously the same principles of an exact imitation; but I cannot say anything positive about this. But it can be safely asserted that all other artificially made waters, especially those which in France and Italy are sold under the name of artificial springs, are not made with the required accuracy, because people always take the liberty of omitting those ingredients, the small quantities of which make them appear useless, although exact analysis may have been followed. * * * The artificial mineral springs possess a great advantage over the natural springs in the shipment of the same. As already mentioned, the water in the whole course of its preparation comes as little in contact with air as this is the case in the springs, in the depth of the earth. Such water as is intended for export, and is, therefore, filled in bottles directly, flows into these bottles under entire exclusion of air and remains in the same state, so far as its composition is concerned, which it had at the beginning of its preparation. No metal is precipitated; no gas escapes; no dissolution of ingredients is possible. 234

The mistakes which are made in bottling the water at the natural springs are not possible here. * * * So far as the identity of the properties is concerned, the judgment of competent persons in this regard is unanimous, and only those who either had no opportunity to compare the genuine artificial product with the natural product, or who from intended or unintended lack of knowledge throw together Struve's imitation with other inexact preparations, raise theoretical doubts about this. But thousands of drinkers who have used the natural and artificial Carlsbad, who have drunk Ems at the spring, and in one of Struve's establishments, confess unanimously that our senses cannot discover a difference in these waters. * * * The reader will find in the following statement facts which prove that the most excellent results which have ever been observed in a patient from the use of a drinking cure are observed at the drinking establishments as well as at the natural springs, and these are facts which are taken from the observations of great practitioners and excellent physicians, among others, Doctors von Ammon, Cerutti, Sir James Clark, Franke, Grossheim,

Hesper, Hedenus, Hertz, Horn, von Konen, Kreysig, Riech, Rüst, Schwarze, Swaine, and many others, and which have been confirmed by my own numerous observations. *The following* ARE *the springs which are manufactured according to exact* numerous and almost yearly repeated *analyses* in Struve's establishments: Of Carlsbad waters, the Sprudel, the Neubrunnen, Mühlbrunnen and Theresienbrunnen; of Ems, the Kesselbrunnen and the Krähnchen; of *Vichy, the Grande Grille;* of Marienbad, the Kreuzbrunnen and Ferdinandsbrunnen; the main spring of Pyrmont, the Pouhon of Spa; of Eger Franzensbad, the Franzensbrunnen and Salzbrunnen; of Obersalzbrunn, the Oberbrunnen; of Kissingen, the Rakoczy; of Heilbrun, the Adelheids-quelle; of Kreuznach, the Elizabethquelle; of the Caucasian springs, that of Narzan; of Narxana, the waters of Pülna-Saidschütz, Geilnau and Selters.

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(Page 335.) *I have heretofore used* VICHY WATER almost exclusively against acidity and kidney and bladder trouble of corresponding nature and against general digestive troubles.

DEFENDANT'S EXHIBIT No. 28.

Annals of Struve's Spring Establishments.

Edited

by

Dr. A. Vetter.

First year.

Berlin.

Publisher: August Hirschwald.

1841.

(Page 1.) Historical remarks on Struve's reproductions with information of the inventor's life.

By Jul. Minding, Dr.

(Page 12.) * * * Experiments which he made in the year 1808 on the production of prussic acid (Blausäure) led to an unfortunate accident; the phial broke, and Struve who immediately fell to the floor, fell into a long and painful sickness. As a result of the heavy injuries of the medullary system, which he had suffered, there came in at the same time an affliction of the motive and nutritive functions of the lower extremities; lymphatic swellings of the body and weakness of a nature resembling lameness, together with disturbances of the abdomen. As a result of all these sufferings, Struve was caused to visit Carlsbad and Marienbad (especially the "Moor baths"). At the latter place he first conceived of the idea of reproduction and made the first experiments respecting this, as well as experiments relating to the effects

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of gas baths on lamed portions of the body, which last experiments he tried on himself. He did not rest until, after many difficulties, he had brought about the building of the first gas bath establishment by the worthy prelate of the monastery ("Stift"), Tepl., Mr. v. Reitenberg. After being almost restored to health again, and well knowing the value of the services which had been rendered to him by the use of those springs, Struve was compelled to find a substitute in the waters which were then shipped, especially the water of the Eger Frenzen's spring, because his circumstances would not permit him continuing the treatment in the place itself. But, just as Bergman had noticed, so also Struve found out that the losses which the mineral waters suffered by transportation were too great to give him hope for sufficient efficacy to serve his own purposes and his needs as a patient. In order to reach a clear understanding of this matter, and, if possible, to find the remedies for so great an evil, he made accurate experiments concerning the changes which had taken place. * * *

(Page 17.) * * * Many years passed under these preparations. The leisure time obtained by a stronger health, and which, under the protection afforded by peace, gave a stronger impetus to new labors, he used more and more for the solution of the important questions that offered themselves. His analytic investigations took a higher aim, and the refinement of the agencies of reaction a more accurate determination of the atomistic proportions and the better construction of his apparatus, showed that the circumstances and surroundings favored his work. The experiments to execute his plans were made and tested in the year 1818, in a small degree.

* * * * * * *

237 (Page 29.) * * * So that it was in the year 1818 when, after many laborious preparations and after he had visited personally and examined the greater number of German medicinal springs, Struve deemed himself far enough advanced to test the gold of his invention with the last touchstone, viz., that of medical experience. His beautiful garden in Dresden, which was soon afterwards—in the summer of the year referred to—opened to so many thousands of people, became the rendezvous of a number of friends and acquaintances who, on account of their health, had to take recourse to springs, and were partly well acquainted with the effect of natural springs. At the same time poor people having diseases of appropriate kind were induced by physicians who were interested in the matter to visit the springs, and, so far as the circumstances permitted it, experiments were made, with various modifications. The imitation of the water, not to speak of a few technical improvements and increasing security against mistake and neglect, as well as the information gained by some analytic discoveries and remedies, had already at that time reached the degree of perfection possessed at the present time. But, on the other hand, the establishments for furnishing the waters were not yet in existence.

The cold waters were bottled like the exported water, although

with greater care; indeed, it was the fact that when several people drank together, a whole bottle could be emptied at once, which caused Struve to assemble several drinkers in one place. Warm mineral waters were prepared in a similar manner to that now in use with the exported solutions, and a large heating box of sheet metal, somewhat like that used in Franzensbad, served as the means of preserving an even temperature. * * *

(Page 33.) * * * The erection of establishments on a large scale was now begun, and it was determined to open the Dresden establishment in the year 1820. * * *

238 (Page 37.) * * * Success could not fail to follow now, and the first pamphlet of the treatise on the reproductions repeatedly above referred to, and which appeared in the year 1824, contains already a very great number of important reports of cases that were observed and described by fifteen of the most illustrious physicians of Dresden and Leipzig.

Struve now went ahead energetically. An establishment in Leipzig was opened shortly after that in Dresden; already in the year 1823 he succeeded in securing the erection of another in Berlin; for this purpose he united with the present sole proprietor of the latter institution, court councillor (Hofrath) Soltman, who, through his ardor for the work and his intelligent activity had no small share in the propagation of the undertaking. In the year 1825 Struve went to England, in order to carry out the undertaking further. Here it was that Faraday subjected the reproduced Carlsbad water to a comparative analysis, and acknowledged, with commendation, its perfect conformity with the natural water, whose composition had shortly before been thoroughly explained by the analysis of Berzelius. Struve found in England a most ready reception and support, and soon the Royal German Spa at Brighton was founded under the supervision of Dr. Swaine; this institution showed through its continuous prosperity, the usefulness of such an institution for the island in a splendid manner. * * *

(Page 38.) * * * Soon thereafter establishments were opened at Konigsberg, Warschau, Moscow, St. Petersburg and Kiew, nearly all of which places were superintended by chemists, who, educated for that branch under his tuition, have also acquired scientific reputations otherwise.

(Page 93.) *The iodine & bromine contained in various mineral waters.* By Dr. A. Struve. Vichy Grande Grille water was dispensed last year for the first time at the establishment at Dresden. *It has proved very beneficial in cases of stone, consisting chiefly of uric acid.*

239 (Page 104.) *Artificial Selters water.* By district physician Dr. Thümel of Berlin.

There is hardly a physician in Germany, perhaps in the whole civilized world, to whom the excellent qualities of selters water, the spring of which has been known for centuries, have not become favorably known in a practical way. For this reason we cannot

appreciate too much the untiring researches of modern analytical chemistry, which has penetrated into the secret workshops of nature and has learnt from her that which before was believed impossible, the artificial production of mineral waters, thereby enriching our store of medicines, so that even the poorest have a full chance of availing themselves of it.

The number of unprejudiced explorers, accurate observers and thinking practitioners is constantly increasing, who are forced by their full conviction to give to give to this grand invention the praise it deserves, and more and more, as they compare without prejudice the results of modern investigators of the natural and mineral springs, do they see how unfounded were the doubts which the most learned authorities formerly raised against the full practical usefulness of the artificial product as compared with the natural mineral waters. More and more the fear disappears, that a true reproduction of these waters is not feasible, because of the alleged impossibility to reproduce the peculiar character fortuitously imparted to the spring, this impossibility being supposed to be due to the insuperable obstacle which it was said analytical chemistry found in the important imponderable substances.

(Page 117.) *The advantages of the artificial production of mineral waters and the beneficial influence of this invention upon the human race and medical science—by Dr. A. Vetter.*

It is a well-known fact, that the use of healing springs has increased to an unusual extent during the present period of peace. * * *

Curiously, this increase occurs at a time, when the natural
240 springs were threatened with a most dangerous competition as the result of a series of careful investigations and ingenious inventions. At first blush it would seem that the complete success of the attempt to reproduce mineral springs after the most accurate analysis would necessarily reduce the number of visitors of the natural springs; while as a matter of fact, the exact contrary has come true. On second thought, however, we find that this fact is in perfect harmony with that progress of science and that the main reason for the extended use of the healing springs is to be found in the more general dissemination of the knowledge of their beneficial and often indispensable effects, such dissemination being due to those investigations and their results.

(Page 157.) On the spring establishment of Struve at Brighton.

(Royal German Spa, Brighton.)

By James Pickford,

Physician to the Eye Hospital of Sussex County.

(Page 158.) * * * The artificial waters of the Royal German Spa are in my opinion identical in their effects upon the human constitution as the waters of the springs after which they are named. This opinion is not the result of a limited experience, but of a

comprehensive experience, gained by the treatment of a large number of various diseases from the opening of the establishment in the year 1825 until the present time. During the last eleven years of that period I have had ample opportunity as a practicing physician at Brighton to observe their wholesome and strong influence on diseases, which had resisted the ordinary remedies and baffled the skill of the most excellent physicians.

(Page 170.) *The season of* 1840 *at the mineral-water establishment in Berlin. By Dr. Vetter.*

241 The entire number of persons drinking the waters was 744. * * *

Vichy (the Grande Grille spring) was taken by 9 *patients with excellent results*, particularly in those diseases for which the use of carbonated alkalies is to be specially recommended. On this occasion I cannot refrain from calling the attention of my colleagues to the great healing qualities of this very strong sodium spring, an accurate mean analysis of which will be found in this number of the Annals and I shall add a few remarks on this subject later on. As soon as these healing powers will have attracted more attention, *the use of vichy in the establishments at Berlin, Dresden, & Leipzig, where this water was dispensed in* 1840 *for the first time, will increase without fail.*

(Page 177.) *The addition of vichy* to the number of waters artificially reproduced has a further great advantage in that its richness in sodium carbonate furnishes a means of strengthening the basis character of other waters more than had been possible heretofore.

(Page 199.) On the manner of bottling and exporting artificial mineral waters.

The principles and the methods which have been adopted in the establishments for the reproduction, for the exportation of mineral waters start from the point that the manufactured waters have to remain enclosed in the bottles under conditions which, according to the needs of their chemical constitution, tend to guard against any sediment, change and dissolution.

The first cause of the dissolution of so many mineral waters is the presence of foreign organic bodies, vegetable substances, &c., which decompose the sulphuric salts in the water and impart to it the smell of sulphide of hydrogen, dull it and change its effects.

This cause of dissolution is not fully done away with at the natural springs, even when the basins are covered up. Straw, parti-
242 cles of dust, dust of flowers, leaves, &c., are blown by the wind into the water or to the goblets and bottles used, and thus get into the water with which they frequently flow into the vessels. Wherever stone jars are used it is not possible, even with the strictest attention of the officers in charge to avoid all negligence; the vessels not being transparent it cannot be seen whether they have been cleaned with the proper attention. Thus it happens that usually a considerable number of such vessels which have been kept for some time show the smell of sulphide of hydrogen.

Worm-eaten, rotten corks produce a similar result. The presence of atmospheric air is the most frequent and most important cause of the destruction of the original proportion of mixture which we just mention here only.

Care is taken in the spring establishments to meet these evils thoroughly. The use of transparent bottles and of wholly sound carefully selected corks as well as the fact that every access of light bodies through draughts of air, &c., is made impossible by the manner of preparation, do away with the first-mentioned causes of dissolution. But for the exclusion of the atmosphere a peculiar operation is brought into action.

After the bottles have been thoroughly cleaned and rinsed with distilled water they are sunk into a basin also filled with distilled water, and so by letting the water get in slowly up to the upper end of the neck of the bottle it is freed from air. On the bottom of the basin is an inlet pipe which can be closed by a stop-cock; from this pipe a strong stream of pure carbonic-acid gas issues.

The bottle filled with water is now reversed and put on the opening of the inlet pipe, whereupon the gas entering the bottle drives all water out of the bottle; this is seen when the carbonic-acid gas finding no more room in the glass vessel escapes in the form of bubbles from the water in the pneumatic apparatus. Then the stop-cock is closed and the bottle, still reversed, is corked up under water.

243 The bottles prepared in this manner now go to the filling cylinder where they are opened immediately and brought into hermetical connection with the stop-cock. Here they are filled automatically by the pressure which is exercised by the carbonic-acid gas contained in the cylinder; and thus by the law of equilibrium they contain only so much gas, as is equal to that pressure. In order to avoid any injury to the workmen, caused by the frequent exploding of bottles, the workmen are provided with wire masks and gloves. The filled bottle is corked and tied up immediately.

This method has proved sufficient through long experience and as guarding against any dissolution, although through opening the bottles, there occurs twice a momentary contact of the interior of the bottle with the atmosphere. But through the great specific gravity of the carbonic-acid gas, and considering the slowness with which the permeation of both gases occurs, it is safe to assert that this short contact is wholly without any influence, and it is so proven by the experience even in those waters which are richest in iron, for even after a long preservation, no trace of a sediment is found. * * *

244 DEFENDANT'S EXHIBIT No. 29.

Annals of Struve's Spring Establishments.

Edited

by

Dr. A. Vetter.

Second year.

Berlin.

Publisher: August Hirschwald.

1842.

(Page 25.) * * * Now there are many diseases (and unfortunately they are in the majority) which can be cured only by a certain medicament, as it is offered by this or that medicinal spring, but which may be cured by that thoroughly, even far away from the spring, just as good in Schwerin as in Turin, in Tula as in Toulon, in Madra as in Madrid; and again, there are persons afflicted with these diseases (and they also are in the majority) who must be cured, if they shall be cured at all, by the spring at these places, far from the spring, because their circumstances will not allow them to seek the spring, but the spring must come to them. * * *

(Page 27.) It is a fact that the waters of Struve resemble the exported natural waters only in this: That they are also exported; in all other respects they are perfectly equal to those used right at the springs. The great difference between the waters taken right from the springs and used there, from that filled in bottles and exported has already been shown. The good and great thing that Struve did for suffering humanity by his invention was, that he removed this difference by his product and manufactured waters, which in all physical, and consequently medicinal properties, equal those taken from the spring and there used, even when they are used a
245 thousand miles away from the establishment. So that it can be said truly of the Struve water, as it stands before me in the bottle here, far from the establishment, that it is not only a product of the kind which is offered to me by nature; in that case the manufacture of mineral waters, aside from the pecuniary profit, which it would bring as well to the manufacturer as the consumer, would not amount to anything, at least without interest to medicine, because it would amount to this, that something which was already produced by nature, could now be produced just as well and perfect by human genius; but it must be remarked and pointed out that Struve's water is something that I cannot, here in my residence, have in that perfect physical and medicinal shape, as a free offering of nature. The manufacture of artificial mineral waters is per-

formed under conditions which exclude the possibility of a change of mixture and a deviation from the composition of the water coming directly from the spring, even though the waters be exported.

* * * * * * *

(Page 29.) * * * I will only remark here that the bottling of the waters for export is done under a perfect exclusion of atmospheric air, which is the cause that the Struve waters can be preserved much longer without the least trace of any dissolution, than it is possible with the natural, which, as it is well known, can only be preserved a short time without dissolving; of course, with the exception of the so-called bitter waters (Pülna Saidschütz). * * *

In the better-attended natural springs Struve's method of bottling has been adopted, but even there people are still very much behind in the execution of it, as can easily be seen at Kissengen, where, however, the greatest attention is bestowed to it.

(Page 40.) Frequently the condition of the patient demands the simultaneous use of other healing agencies. * * * In such a case, the governing physician of the watering place, who must know best the difference between pharmaceutic remedies and
246 mineral waters, would readily prescribe a few glasses of Pülna or Selters water, &c., to the great advantage of the patient, if only the care for the reputation of the spring through which the patent is to be cured would permit. In Struve's establishment there is no such jealousy of the springs; the patients are there in order to be cured, not in order to increase the reputation of this or that spring; there no one spring is favored more than any other, in the choice of and change of springs; the necessity of the patient is the only and ultimate motive, so that the patient there takes Carlsbad water and water of the Grande Grille of Vichy and interchanges them with Narzau from the Caucasus; * * * in short, he need no in any way sacrifice his advantage to the advantage and reputation of the watering place.

(Page 219.) *Information about Struve's spring establishments, particularly for the year* 1841.

Although a complete report concerning the doings of the several establishments taken together would have considerable interest, we must be satisfied from the several items which it has been possible to gather to obtain a general view of the doings of the establishment and of their effect upon the general welfare. The author has spared no pains in order to increase the number of these items, but several circumstances, particularly the considerable distance of several of the most important establishments have until now impeded his plans in many respects. It is with great regret that we lack any complete information of the recent condition of the establishment at Moscow, which has become of great practical importance under the management of Messrs. Herrmann and Dr. Jenichen, and is of an ever-increasing and beneficial influence for the vast regions of the middle part of Russia in scientific and practical respects. The number of the patients was 350 in the year 1841, which number is not very

great, however, and has been exceeded in Moscow already by 100 before this. At the same time 650 mineral baths were pre-
247 pared and 284,000 bottles of mineral water were shipped. A very important part of the effectiveness of that institution is in the use of exported mineral waters which increase every year and which export at the same time is the best proof of a great demand for mineral waters in central Russia. * * *

(Page 221.) * * * The establishment at St. Petersburg was visited by 253 guests in the summer of 1840, according to the report of Dr. Thörner, of whom 23 used baths besides drinking mineral waters, while 12 used only baths. The result was complete recovery of 99, great relief to 102, while 16 were not cured and 26 did not end the cure.

The total number of the drinkers at the establishment at Leipzig in the year 1841, was 109, of whom 86 were men and 23 women. Of these drank Carlsbad water, 27; Ems water, 14; *vichy water, 1;* etc., etc.

At Dresden during the same period 408 persons drank the following waters:

Carlsbad water	148
Marienbad Kreuzbrunnen	96
Ems	46
Eger Salzbrunnen	32
Vichy	*22* &c., &c.

In Berlin the number of the visitors of the spring were 825. Of these drank,

Carlsbad water	283
Vichy	*7* &c., &c.

According to this summary the spring establishments count at present nearly four and a half thousand visitors. The number of those who use the exported waters is, however, much more considerable.

248 DEFENDANT'S EXHIBIT No. 30.

Annals of the Struve Establishments.

Edited

by

Dr. A. Vetter.

Third year.

Berlin.

Published by August Hirschwald

1843.

(Page 6.) The drinking establishment at Dresden has been opened by the kindness of Messrs. Doctors Struve, father and son, for the patients of the Children's hospital, gratuitously, for which reason every year a not inconsiderable number of such visitors is taken care of.

(Page 137.) *Answer to the objections made by Professor A. Pleischl in Vienna against the replacing of natural by artificial mineral waters.*

(Page 143.) This cannot be called fair play in view of the fact that about 3,500 persons alone seek health at the drinking establishments.

(Page 220.) *Information about Struve's spring establishments in the year* 1842.

(Page 221.) The establishment at Moscow has been used to about the same extent as in the year 1841, having the same number of drinkers. The total number of drinkers at the establishment at Warschau in summer of 1842 was 681. At the establishment at Brighton 403 persons drank the waters, in the following proportions:

Carlsbad	80	persons.	
Carlsbad and Marienbad	35	"	
Carlsbad and Ems	2	"	
Carlsbad and vichy	2	"	
Vichy	*9*	"	
Saratoga.	6	"	&c., &c.

249 At the establishment at Dresden the total number of drinkers was 442, who drank:

Carlsbad	160	
Ems	51	
Vichy	*15*,	&c., &c.

(Page 224.) The whole number of drinkers at the establishment at Leipzig was 147, who drank:

Carlsbad	24
Ems	15
Vichy	4, &c., &c.

The number of drinkers at the establishment in Berlin was 885 during this season, of whom drank: Carlsbad springs, 230; *Vichy Grande Grille*, 20, &c., &c.

The domestic use of mineral waters was also very extensive. Aside from the selters water, which, on account of its agreeable taste and its refreshing qualities, is used more and more and became for many a thing of necessity during last summer, the most important among the mineral waters, especially Marienbad and Carlsbad, have been particularly used.

(Page 231.) The *joint use of Carlsbad and vichy* in the manner pointed out by me, especially for the purpose of supplementing the alkalizing features of Carlsbad, has been found very effective again during this season.

250 DEFENDANT'S EXHIBIT No. 31.

The Mineral Water Establishments of Struve.

Leipzig.

Published by J. J. Weber.

1853.

(Page 6.) It has been proved by unmistakable chemical evidence that even the most careful method of filling cannot save most mineral waters from partial decomposition of their mixtures. Especially the iron which is so important with respect to the healing qualities is, aside from the loss of gaseous ingredients, soon changed by the contact of atmospheric air, which can never be avoided in filling at the spring, to a higher insoluble degree of oxidation, that is, the protoxide is changed into oxide, and is thus precipitated from the water in brown flakes, or it settles as a brown sediment at the sides of the bottles. * * *

(Page 7.) Aside from this one important cause of decomposition, other causes have a bearing upon the decomposition of the exported natural waters. To this category are to be counted especially the absence of two agencies which accompany the process of producing many natural mineral waters, namely, a stronger pressure and a higher degree of temperature; the latter of which, namely the loss in temperature, seems to cause a change of the earthly salts from compositions which are more easily soluble into such as are less soluble, and therefore less effective.

* * * * * * *

(Page 9.) Friedrich Adolph Struve, born on May 9, 1781, at Neustadt, near Stolpen, in the Kingdom of Saxony, received a

scientific education at the high school of Meissen and at the universities of Leipzig, Palle and Vienna; in the year 1803 he
251 tried to find a practice in his native city after having obtained the degree of doctor of medicine, but was compelled to leave the same again in 1805 by reason of his purchase of the Salomonis-apotheke (a famous apothecary shop) in Dresden. An unfortunate event here produced the first germ of the invention which afterwards became important and has made the name of Struve immortal. In making an experiment for the production of prussic acid in the year 1808, a phial burst, whereby Struve was not only made insensible for the moment, but was also paralyzed at the lower extremities in consequence of the strong action of the poisonous gas upon the spinal column. Continued paralysis, combined with affections of the abdomen, compelled him to visit Carlsbad and Marienbad, and at the last-named place he first formed the idea of an artificial reproduction of mineral waters. Having been healed to some extent, and acknowledging the extraordinary services of those springs, he tried to replace this by the use of the exported waters, especially of the Eger and Franzensbrunnen, as he found it impossible to repeat the cure at the springs. In doing so, however, he noticed the losses which the water suffered by the decomposition which was naturally connected with the transport and by which the efficacy of the water was greatly impaired. He carefully scrutinized this fact, and, in consequence thereof, resumed the idea of a reproduction with new warmth. The preparations necessary to accomplish this object occupied a long number of years, it being especially important to obtain a more exact analysis of the mineral waters, and for this purpose a greater refinement of the means of chemical reaction, a more correct determination of the antagonistic proportions and better quality of apparatuses, and especially a more thorough knowledge of the process by which mineral waters are formed, before the undertaking itself could be taken in hand. It was only after Struve's genius, his acute perception and indefatigable
252 perseverance, favored by the great progresses of the art of severing ingredients which were made at that time, and assisted by the mechanical talent of Mr. Blochman, had overcome all these difficulties, that the first experiments could be made in a small measure, which was done in the year 1820. A small circle of friends and patients, desiring to use mineral waters, were the first visitors in Struve's garden, where, of course, all apparatuses for the regular furnishing of newly produced waters were still in a rather crude state. The apparently favorable results, however, which were already then pronounced as equal to those obtained at the springs by several patients, soon called the attention of clear-headed physicians to the undertaking, among which should be named Kreysig, who, by his balneological experience, has become an important authority. In consequence thereof, the formal opening of a drinking garden took place in Dresden in 1820, and almost at the same time also in Leipzig; thereafter, in the year 1823, followed the erec-

tion of a drinking establishment in Berlin, together with the assistance of Court Councilor Soltman.

(Page 17.) After the fact had been found out that mineral waters are produced by the washing out of minerals, it was easy to assume, regarding the different compositions of one and the same layer of rock, that these waters would be subjected to changes with reference to the quantities and qualities of their ingredients. A careful comparison of the analyses repeatedly made of the same gave unmistakable proof that their compositions were not the same in many cases, and that, even where the composition seems to be most uniform, from time to time single ingredients appear in small quantities, and disappear again, as Berzelius had already proved by the chemical differences in the sediments of the Carlsbad sprudel. * * *

Only after Struve had in this manner made the way to perceive clearly the process of forming mineral waters, he undertook
253 to reproduce the same artificially, for which enterprise he put down the following conditions as essential for the success of his great and difficult undertaking.

First of all it was necessary to have exact analyses of the mineral waters, of their quantities and qualities, taking into consideration even the smallest ingredients. Wherever such analyses had not been made yet by chemists who were of acknowledged experience and deserving of confidence, Struve himself and his assistants, among whom especially State Councilor Hermann, in Moscow, and the chemist Bauer, in Berlin, are to be named, undertook the same and repeated them from time to time for greater accuracy. The changes in the quantities of their ingredients which had been noticed at different times in the natural waters were computed, and by averaging the same, standard prescriptions were produced, according to which the composition could be made as done by nature. * * *

(Page 19.) To avoid this greatest of all objections, Struve introduced a preliminary filling of the bottles with carbonic-acid gas.

(Page 23.) After the stop-cock has been opened the mineral water flows into the bottle, while at the same time the carbonic-acid gas used for the preliminary filling of the bottle escapes by means of a mechanism within the stop-cock. * * * The second division of the manufacturing establishments is Struve's drinking establishments. It is there the purpose to enable the patient to take each cupful in the same efficient condition as at the spring. The several waters are put into tin cylinders for this purpose, in which, by an ingenious apparatus, the quantity of carbonic-acid gas for each water is constantly regulated exactly and as long as the water is taken. The same is done, with greatest accuracy, with reference to the temperature, as the difference in the efficacy of some mineral waters, especially those of the different springs of Carlsbad, is based simply upon their differences in temperature. * * *

Among the drinking establishments now existing, that in
254 Berlin, firm Dr. Struve-Soltmann which is universally known, takes the first place by reason of the magnificence of its insti-

tutions and the quantity it produces. * * * Next to it the establishment at Dresden ought to be named, the magnificent gardens of which have been recently considerably enlarged and beautified. * * * The drinking establishment at Leipzig is located in the world-renowned Gerhard's garden. The drinking establishment at Cologne is situated in the Botanical garden.

The surroundings at Brighton are magnificent. * * * The establishment at St. Petersburg has the most magnificent appointments, as the establishment was fitted out with the general assistance of the Emperor. * * * Besides those already named, there are Struve's drinking establishments in Moscow, Warschau, Kiew, Odessa, Riga, Konigsberg, Breslau and Hanover, their number now being 14.

DEFENDANT'S EXHIBIT No. 32.

Natural Mineral Springs—How They Can Be Dispensed with and Replaced in Simple Manner.

For physicians and the educated public.

By

Dr. Ph. Jochheim,

Practising physician at Darmstadt,

Mainz.

Published by Eduard Janitsch.

Darmstadt, April, 1861.

(Page 59, chapter 3.) *Exported Natural Mineral Waters.*—Natural mineral waters at the spring and exported natural mineral waters, are two entirely different medicinal agencies.

255 The natural mineral water which is filled into jars for transport usually changes during the act of filling, and the transport often to distant places, and the effect of the temperature during the same, and the period of storing the shipped water, do the rest to make something else out of it than it was in the beginning. It can, therefore, not astonish us that experience teaches how the shipped natural mineral waters have entirely different effects from those drunk at the spring. * * *

(Page 63.) The more evaporating substances a natural mineral water has and the higher its temperature is at the spring, the greater is its change by transportation. Salty mineral waters containing little gas, like the mineral waters of Saidschütz, Pülna, Seidlitz, &c., suffer the least disadvantage by the same.

We have gained the conviction that the effect of the natural mineral waters at the spring is largely overestimated, and that the cures effected and which were observed during their use, are to be

ascribed in most cases not so much to their ingredients as to other circumstances which are connected with a visit to a watering place, and of which we have spoken. During the use of the transported natural mineral waters the co-operation of all these circumstances which often are of such great importance and which often at the springs are the only reason of success, are not only wanting, but the patient often remains under injurious influences which he cannot well avoid at home, and seeks his recuperation in the shipped natural mineral water. Inasmuch as this usually reaches us in a totally different condition, it is apparent that we cannot expect much of cures with shipped natural mineral waters, because in their use most circumstances which are favorable in using natural mineral waters are lacking.

(Page 65, chapter 4.) *Artificial Mineral Waters.*—Thousands of patients are prevented by their circumstances from obtaining
256 the natural mineral waters at the spring. It was, therefore, natural to conceive the idea of artificially reproducing the natural mineral waters for the purpose of making approach to them more easy, especially as shipped natural mineral waters do only inadequately replace the water of the spring, as they usually reach us in a totally changed condition. We find in Plinius already a prescription for preparing artificial sea water. But the deficient knowledge of the constituent ingredients of the natural mineral waters made an even approximately true imitation of the same possible only in the last century.

The first step to artificially prepare mineral waters was taken by the physician and chemist Venel at Montpelier, who, in the year 1755, explained to the Academy of Sciences a method of preparing artificial selters water, which, before him, was considered an impossibility. Lane found for the first time that the carbonic-acid gas was the means of keeping iron in solution in water. The Swedish chemist, Bergmann, published prescriptions in the years 1774 to 1778 for imitating the mineral waters of Saidschütz, Selters, Spa, Pyrmont and some other hot and cold sulphur springs. At the end of the last century there were already a few busy factories of mineral water; thus Gosse, an apothecary at Geneva, together with Paul at Paris, is said to have sold, about 1790, every year 40,000 bottles of selters water. In the year 1803 a similar establishment was founded at Prüfening, near Regensburg. All these imitations of natural mineral waters were, however, still incomplete.

Struve, who in the year 1818 opened his establishment for the manufacture of artificial mineral waters in Dresden, deserves almost alone the credit of good imitations. Since that time a large number of such establishments have been created in different cities of Europe.

257 DEFENDANT'S EXHIBIT No. 33.

Jubilee of Struve's Mineral Water Establishments.

Dedicated to the memory of Friedrich Adolph Struve.

By

Prof. Dr. Hermann Eberhard Richter, Dresden.

Published by

Ramming's printing establishment.

1871.

Preface.

We commemorate today more than the fifty years of the existence of an industrial establishment or a new branch of industry. We commemorate today the existence and the continued success of an enterprise which from its first day has been, theoretically, as well as practically, a sign of true progress and an important factor thereof, and in which is incorporated the victory of reasonable science over romance and prejudice, of considerate art over the powers of nature, and of the spirit of modern times over the mystifying efforts of the past.

(Page 8.) Struve and his adherents showed, in opposition to the objection that the natural springs possessed a proper living warmth, the following: That the effect of their temperature upon organisms as well as upon inorganic matter was the same as that of artificially heated waters, if the latter were composed and used in the same way; further, that the latter do not cool quicker than the former; and further, that both affect the galvanometer in the same manner.

They reminded the investigators that the chicken in the egg
258 grows as quickly and as completely by artificial breeding as by the breeding of the hen.

Struve and his adherents showed against the objection that the carbonic-acid gas was bound more intimately in the natural water as in the artificial water (because it remained a long time clinging to the walls of the glass), as follows: That the artificial mineral waters, even after 24 hours, and standing in an open goblet, contained more carbonic-acid gas than the natural waters under the same conditions, and that the bubbles of gas sooner leave the wall of the glass, because they are larger, and therefore they overcome more easily the attraction of adhesion.

When Berzelius had found iodine and brome in the Carlsbad water, and this was used by Struve's opponents, Struve's son showed that half a pickled herring contained more iodine than eight goblets of Carlsbad, and that if any one wanted to get an ounce of iodine into his body he would have to drink a lake of mineral water one

foot deep and 780 feet in circumference. Repeated and carefully made analyses also showed that the quantity of iodine contained in Carlsbad (and also the quantity of alkali and other mineral constituents) is very varying and sometimes entirely missing. With reference to other objections made against the compositions used by Struve, it was ascertained amongst others, that the buturic acid of a certain mineral water came from a sheepfold in the neighborhood, while the nitric acid found in another came from the decomposed organism of a pond in the neighborhood. * * * According to Hermann's thorough investigations, the "organic constituents of the mineral waters were shown to be substances produced by decomposition, which can only have injurious effects in drinking water."

Finally it appeared at the end of this contest of many years that Struve's establishments are the best friends and allies of natural springs, inasmuch as only those natural springs showed a
259 quick increase of visitors which Struve had found fit to reproduce, and which thereby had been brought to the acquaintance of distant physicians, especially in large cities where Struve's establishments existed. The time has come where a natural spring, in order to gain public favor, has to apply to Struve's establishments to cause its waters to be reproduced there, in order to introduce the same more quickly among the medical and drinking public. * * *

(Page 9.) *The drinking establishments are still greatly frequented*, partly by such who, through pecuniary or family circumstances, are prevented from traveling to distant watering places, *partly in cases where other circumstances prevail.* This is mainly the case; first, where it is not to be foreseen whether any and which spring may be advantageous, and where, therefore, several waters belonging to different places have to be tried first; second, *wherever several springs are to be drunk at the same time; for instance*, Carlsbad and Ems, *Kissingen and Vichy*, &c., which are to supplement each other in their effects; third, wherever a cure is to be conducted by a specialist who can only be found in one of the larger cities, as, for instance, in the case of eye diseases, ear diseases, and the like; fourth, whenever the watering place in question is so crowded that the desired spring cannot be drunk in a suitable manner. This is at present the case in Carlsbad, especially with reference to the Mühlbrunnen and Marktbrunnen there, where people have to stand in line for more than a quarter of an hour in order to have a cup filled with the water; so that patients who, according to the old method, required from 8 to 12 cups, must renounce drinking water in Carlsbad during the summer season.

* * * * * * *

On the other hand, it has been shown more and more how much superior the method of shipping the water is in Struve's establishments as compared with that of the natural springs, in spite of
260 the recently introduced improved methods of filling. For a natural mineral water changes in the first instant when it comes

in contact with air. Each atom of air oxygen with which it comes in contact decomposes the same to some extent, especially with reference to the quantity of iron, carbonic acid and lime (three important factors for healing purposes). The so-called refreshing of such decomposed mineral waters by addition of carbonic-acid gas is, as every chemist knows, mere nonsense. Only the imitated waters of Struve's establishment, which are prepared under entire exclusion of atmospheric air, in vessels perfectly free from oxygen, can furnish a mineral water which will keep for years without decomposition. Even whenever the managers of the natural springs, following Struve's example, empty glass bottles which are filled with distilled water in carbonic-acid gas and allow the spring to flow into these, they cannot quite avoid contact with the oxygen of the air, and in consequence thereof, decomposition. You need only break one of those bottles and pour some prussiate of potash into the broken pieces, and you will find the oxide of iron.

Another disadvantage which can hardly be avoided in shipping natural mineral waters is that small particles of vegetable matter (for instance, hairs of plants, little pieces of wood, seeds and germs) which are floating about everywhere in the air, or pieces of corks get into the mineral water. These commence in a short time to decompose the sulphuric-acid salts by means of their carbon, and in this way produce sulphide of hydrogen, with a smell of foul eggs, whereby such waters become almost unpalatable. In Struve's establishment this is nearly impossible, as the contact of air with the water is everywhere prevented and the work is done in closed spaces having no currents of air, the glass bottles are filled with carbonic-acid gas before they are filled with the water, and only new corks are used.

(The list of waters produced at Struve's establishment which is annexed to this exhibit contains the names of sixty-two different mineral waters.)

261 DEFENDANT'S EXHIBIT No. 34.

Dr. Struve's Artificial Mineral Waters on the First Balneological Exhibition at Frankfort-on-the-Main.

60 years jubilee of the first establishment at Dresden.

By

Dr. H. Ploss,

Practical physician at Leipzig.

Leipzig.

Published by F. C. W. Vogel,

1881.

Preface.

(Page 3.) Since the founding of the first establishment of Struve in Dresden on June 4, 1821, sixty years have passed which give occasion for a gratifying review of the extended working of the world-renowned institutions of Struve. * * *

(Page 10.) Even after the death of the founder, the indefatigable efforts of his son, Dr. Gustave Adolph Struve, at Dresden, succeeded in keeping the institutions in the same flourishing condition. Among more recent events in the original institutions is to be noted that Dr. Oscar Struve, who has been the owner of the Leipzig establishment for twenty years, assumed also the administration of the Dresden establishment on January 1, 1881.

262 DEFENDANT'S EXHIBIT No. 35.

Struve's Mineral Waters

In their relation to their healing properties as ascertained by medical experience, as compared with that of the natural sanitary springs.

For the 25th anniversary of the Leipzig establishment.

By

Dr. of Med. Robert Flechsig,

Royal Saxon secret court councilor and royal spring physician at Elster (a watering place in Germany).

Leipzig:

Published by F. C. W. Vogel, 1886.

(Page 12.) It is not uninteresting to read the report which the *Brighton Herald*, a great English newspaper, gave on January 17, 1826, on the visit of King George to the establishment at Brighton,

and to hear the judgment which he passed upon it and its properties. In this report it is stated verbally:

"The king was very well satisfied with the establishment, and pronounced the desire to protect and foster the establishment by his influence, as it gave an opportunity to avoid the many journeys which have to be taken for the use of mineral waters, because this establishment furnishes all those waters in the most perfect manner, as well with regard to their medicinal properties, as also to their required temperatures." The same paper states that when leaving the establishment, the king said to the physician who accompanied him: "As the genuineness of these waters has been proved, I hope to save to my people the journeys to the continent in order to
263 use them there, and in order that the German mineral water be called Royal mineral water, and that the royal coat of arms be used thereon." * * *

The indomitable activity of Friedrich Adolph Struve to improve the manufacture of mineral waters in every respect has been inherited by his grandson, who uses every means to make the progress of the science useful for his purpose, in order to do justice to the highest expectations of science. The products coming from the manufactories at Dresden and Leipsic proved that he succeeded in this, and they have been crowned with the first prizes at all international exhibitions of the last years where they were exhibited, and have found access to the highest circle of aristocracy; thus, King John of Saxony has always been an active patron of Struve's establishments. * * *

(Page 23.) Struve himself gave a very interesting and noteworthy account in his pamphlet on the reproduction of the artificial sanitary springs (first and second sheets, Dresden and Leipsic, 1824 and 1826); the cases of diseases are collected from the secret practice of the most famous physicians of that time, amongst others from that of Ammon, Frank, Hedemus, in Dresden; Prof. Horn, in Berlin; Professors Cerutti, Hasper, Polak, all of Leipsic. They all testify to the high therapeutical value of the Struve imitations, and show, almost without exception, that they supplant in every way the natural mineral waters.

(Page 27.) Of *Struve's mineral waters*, which are used to advantage as substitutes, *the following are especially mentioned among reproductions of mineral waters:* * * * *the* GRANDE GRILLE OF VICHY, which is famed for its effectiveness in catarrh of the bladder * * * *of all the above-mentioned waters, it has been said that Struve's reproductions had produced exactly identical effects and results of cure as the natural ones, to which they were in nowise inferior.*

DEFENDANT'S EXHIBIT No. 38, JANUARY 21, 1898. F. A. M., Ex'r.

(Cut of siphon.)

SIR: We have opened today at 133 Fourth avenue, between 13th and 14th streets, a business for the manufacture and sale of

Carbonic acid and artificial spring waters in fountain bottles.

The fountains which have been improved by Mr. Warker, and for which improvement a patent has been granted by the U. S. Patent Office at Washington, remedy the great want always felt of preserving in liquids an excess of carbonic-acid gas. While mineral waters, as usually offered to the public, are either stale or soon become so after uncorking the bottle, losing thereby their *principal medicinal quality*—inasmuch as the carbonic-acid gas escapes and the carbonates of the alkaline earths become insoluble and sink to the bottom—the waters retain in our *fountains* an excess of carbonic-acid gas to the last drop. A part of the water can be taken at a time and the rest will preserve all its original properties—*it will sparkle and foam like the first glass.*

We have also taken great pains in furnishing to the public an article of superior quality. Mr. Carl Schultz of the U. S. Assay Office, has consented to take charge of the chemical part of the business. The water will be perfectly purified and the carbonic-acid gas, by a novel series of purifiers, will be freed from all constituents which impart to it a disagreeable taste and unhealthy effects. The mineral waters will be made with the greatest care and according to the best analyses known, so that they
265 will not differ from the natural springs, and thus our customers and the invalids generally will be able to obtain them of the same composition and in the same condition as at the springs themselves.

The *fountains* will be delivered at the houses of our customers in boxes of ten and five, the woodcut shows the way of using them; they should always be kept in a *cool and shady* place. As necessarily a great expense has been incurred in obtaining a sufficient number of these beautiful and costly apparatus and as they are very well made and very strong, having been tried with a pressure of 15 atmospheres, we hope a generous public will aid us in our enterprise by keeping and returning the *fountains* in good order. They can be injured only intentionally or by gross carelessness; and we expect in such cases to be reimbursed the cost of the *fountain*. Strangers without references will have to pay a deposit of 75 cents per *fountain*.

Our rates will be:

Carbonic-acid water	*large fountain*	$0.10
	small fountain	0.05
Lemonade	*large fountain*	0.12
	small fountain	0.06
Selters (seltzer)		
Kissingen (Rakoczy)		
Vichy		
Saratoga (Congress)	*large fountain*	0.15
Pyrmont I (chalybeate spring)	*small fountain*	0.10
Pyrmont II (with percentage of carbonate of iron ten times increased)		
Citrate of magnesia		0.25

We hope our customers, who wish to make the carbonic-acid water, which is pure water impregnated, with an excess of carbonic-acid gas, more palatable, will not find it too troublesome to put a few pieces of ice and their favorite syrup in the tumbler. Added to light wines, it will make a most refreshing and sparkling beverage.

266 To poor sick persons, upon the prescription of a physician and as far as our stock of bottles will permit, we will be very happy to furnish the desired waters at half price.

WARKER & CO.

New York, *July* 31*st*, 1862.

See next page.

Certificates.

UNITED STATES ASSAY OFFICE, *July* 8*th*, 1862.

I take pleasure in commending, unsolicited, the enterprise of Warker & Co. Mr. Carl Schultz, who has charge of the chemical part of the business, has been associated with me in this office from its commencement; and I feel entire confidence, from an intimate knowledge of his high scientific acquirements, and his strict integrity, that all the waters manufactured under his direction can be depended on for their purity, as well as for their conformity to the most reliable analyses of each kind.

JOHN TORREY.

Mr. Carl Schultz.

SIR: I have examined with great interest the fountains you left with me, and some of my patients have used the mineral waters. They report very favorably of them.

I have no doubt that the fountains, enabling us to get in our sick rooms well-charged carbonic acid and other mineral waters, will be a great aid in the treatment of febrile and other diseases. I wish you perfect success in your beneficent enterprise.

C. R. GILMAN, M. D.,

Prof. Obst., &c., &c., Coll. Phys. & Surgeons, New York.

267 To bring sparkling and cool soda water to the bedside of the fever-stricken patient and to see it by the mere touch of the finger on a lever fly bright and sparkling from a small fountain, is indeed a boon to the sick. It has been done in a style that cannot be surpassed. Mr. Schultz has now only to add bottled sunshine to rival this beautiful device.

EDWARD H. DIXON, M. D.,
Ed. Scalpel.

It is with the greatest satisfaction that I have examined the fountain bottles of Messrs. Warker & Co., by means of which they are able to provide every citizen at his residence with sparkling carbonic acid and artificial spring waters at a very reasonable price; in reality it was a want felt a long time since, which has now been supplied by the most happy combination of an excellent and most appropriate glass fountain and well prepared mineral water, the purity of which requires no better guarantee, than the name of one of our most able and careful chemists, Mr. Carl Schultz, of the U. S. assay office.

P. H. VAN DER WEYDE, M. D.

Cooper Institute Laboratory, July 10, 1862.

Messrs. Warker & Co.

GENTLEMEN: I have examined the mineral waters prepared by you and find the mode of keeping them in "fountain bottles" in every respect preferable to ordinary bottles or jugs. As the patient in using mineral waters generally begins with one or two tumblers full a day, he may keep the rest in the fountain for 2 or 3 days without any loss of carbonic-acid gas, while in common bottles, if once opened, the water soon became of inferior quality.

268 Another advantage is the cost of your waters, which is only one-half the price of the natural spring waters, while they possess all the medicinal qualities of the latter.

Yours respectfully,

FRED M. HEXAMER, M. D.,
86 *West 13th Street.*

The enterprise of Messrs. Warker & Co. deserves the confidence and patronage of the public. The "fountain bottle" supplies a desideratum long felt. The value of carbonic acid and other mineral waters as beverages and therapeutic agents is becoming daily better established and hence the importance of having them in a portable form.

C. R. AGNEW, M. D.

269 REP. OF FRANCE *vs.* SCHULTZ.

DEFENDANT'S EXHIBIT SETTLEMENT LETTER No. 1, Nov. 17, 1898. F. M. A., Ex'r.

P. O. box 2979.

Arthur v. Briesen. Antonio Knauth.

Briesen & Knauth, counselors-at-law, 229 Broadway, New York.

NEW YORK, *March* 5, 1892.

U. S. Circuit Court.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Establissement Thermal de Vichy, Complainants,
vs.
CARL H. SCHULTZ, Defendant.

Messrs. Jones & Govin, solicitors for complainants.

GENTLEMEN: Mr. Carl H. Schultz, the defendant, has authorized us to make you the following proposition for a settlement of this case. He proposes to use, in place of the labels up to the present time used by him on his vichy water, labels of which the following are copies:

270 In fact, Mr. Schultz has already changed his labels to this form, and he would also be willing, if your clients should desire this, to print the word "artificial" in the left-hand corner of the upper label in type corresponding to the words "manufactured by" on the right-hand side.

The additional change of adding the word "artificial," however, could not be made right away, but would be made in the course of the present year.

As you are undoubtedly aware, Mr. Schultz has manufactured and sold his vichy water under the labels used by him for 30 years without meeting a protest on the part of the owners of the natural spring; he has acted throughout in good faith, and this proposition is made by him to meet any possible complaint by the owners of the spring, such as is made in the suit which you have brought. This proposition is made on the understanding that, if accepted, you will discontinue the suit without costs to either party, and it is made without conceding that the complainants have a right to demand any such change or have any cause of action against Mr. Schultz. If accepted, a binding agreement will be executed by Mr. Schultz, the detail of which can be easily adjusted between us.

Respectfully yours, BRIESEN & KNAUTH.

(Copy.)

271 REP. OF FRANCE *vs.* SCHULTZ.

DEFENDANT'S EXHIBIT SETTLEMENT LETTER No. 2, NOVEMBER 17, 1898. F. M. A., Ex'r.

P. O. box 2979.

Arthur v. Briesen. Antonio Knauth.

Briesen & Knauth, counselors-at-law, 229 Broadway, New York.

NEW YORK, *March* 5, 1892.

Messrs. Jones & Govin, 45 Cedar street, city.

GENTLEMEN: In accordance with the conversation which our Mr. Knauth had with your Mr. Jones, we beg to submit to you, herewith enclosed, a formal proposition to terminate the litigation between the Vichy Company and Mr. Schultz.

We are informed by Mr. Schultz that he has had the plates prepared for the new label, and is now exclusively using the new label on his vichy water, and that another change of this label, by adding the word "artificial," will be accompanied by considerable expense, and cannot be done at present. Mr. Schultz, as we understand, has just left for the South, but will probably return in a few months. He contemplates making a change in his business in the course of this year, and would take that opportunity to change the label then by adding the word "artificial," if that is the desire of your clients.

Please let us know when you expect to be able to give us an answer to this proposition.

Very truly yours, BRIESEN & KNAUTH.

(Copy.)

272 REP. OF FRANCE *vs.* SCHULTZ.

DEFENDANT'S EXHIBIT SETTLEMENT LETTER No. 3, NOVEMBER 17, 1898. F. M. A., Ex'r.

Edward K. Jones. Raphael R. Govin.

Jones & Govin, 45 Cedar street.

NEW YORK, *March 8th*, 1892.

LA REPUBLIQUE FRANCAISE ET AL.
vs.
CARL H. SCHULTZ.

Messrs. Briesen & Knauth, 229 Broadway, New York.

GENTLEMEN: We beg to acknowledge the receipt of your favor of the 5th inst., enclosing a formal offer in behalf of Mr. Schultz to modify his vichy labels in accordance with the statements made therein.

We will communicate the contents of your offer to our clients in France, and, upon receipt of their answer, will duly advise you.

In the meantime, however, we trust you will proceed with the preparation of your answer, in order that, should the offer be refused, the case may not be delayed.

We are, gentlemen,

Very truly yours, JONES & GOVIN.

273 REP. OF FRANCE *vs.* SCHULTZ

DEFENDANT'S EXHIBIT VICHY JUDGMENT TRANSLATION, NOV. 17, 1898. F. M. A., Ex'r.

(Translation.)

January 19, 1881. 3rd Chamber, No. 6.

Compagnie Fermière de l'Etablissement Thermal de Vichy against Compagnie Propriétaire des Eaux Minérales de Vichy.

Extract from the minutes of the record office of the civil tribunal of first instance of the department of the Seine, sitting at the Palace of Justice, Paris.

The civil tribunal of first instance of the department of the Seine, sitting at the Palace of Justice, Paris, has delivered at a public session of the 3rd chamber of the said tribunal the judgment the terms of which are as follows:

Session of Wednesday, the 19th January, 1881.

Between the Compagnie Fermière de l'Etablissement Thermal de Vichy, a limited company, having its principal office at Paris, 22 Boulevard Montmartre, represented in the present action by Mr. Denière, president of the board of directors, residing at the principal office of the company, the plaintiff and defendant; appearing and pleading by Me Péronne, counsel, assisted by Me Paul Roche, attorney,

On one side,

And the Compagnie Propriétaire des Eaux Minérales Naturelles, Elizabeth and St. Marie Springs, at Cusset, near Vichy
274 [Allier], a limited company, having its principal office at Paris, 124 Rue St. Lazare, the said company acting in the person of its manager and board of directors,

Defendant and plaintiff, appearing and pleading by Me Bozerian, counsel, assisted by Me Debladis, attorney,

On the other side.

Without the above attributions being able to injure or prejudice in any manner whatever the respective rights and interests of the parties.

First paragraph.

Principal Action.

Facts.

The Cie Fermière de l'E. T. de Vichy, pretending that by the terms of the law of the 10th June, 1853, and of the "cahier des charges" annexed thereto, it had obtained from the State [the owner] the concession to exploit the springs and the establishment of Vichy, situated within the limits of the "commune" of Vichy.

That it had derived its name from the concession itself which had been accorded to it and from the method of farming adopted, and that since its origin it had been known by the name of Cie Fermière de l'E. T. de Vichy;

That the said concession, conformably to the laws of the 10th June, 1853, and of the 25th April, 1864, included, besides the thermal establishment and two springs situated outside of the "commune" of Vichy, the seven springs owned by the State within the said "commune;"

That on the territory of the "commune" of Vichy two other springs were operated belonging to private individuals, viz., the Lardy and Larband springs.

That according to a deed deposited in the office of Mes
275 Devès and Sarbet, notaries in Paris, on the 9th August, 1878, a company had been formed having for object:

1st. The operation of two mineral-water springs at Cusset, near Vichy, known under the name of Elizabeth and St. Marie springs.

2d. The operation of the thermal establishment of Cusset, near Vichy, including the thermal establishment and the hydropathic establishment.

3d. The carrying on of the Grand Hotel des Bains, St. Marie.

4th. The acquisition of the two springs St. Marie and Elizabeth and of the baths establishment of the Hotel St. Marie, the whole in the condition in which they are at the present time.

That this company had taken the name of Compagnie Propriétaire des Eaux Minérales de Vichy, springs: Elizabeth and St. Marie, at Cusset, near Vichy [Allier].

That this name caused in the mind of the public an inevitable confusion to the prejudice of the plaintiff company, by the continual suppression of the second part of the phrase which composed it.

That a judicial decision had indeed proclaimed [being on that point in agreement with hydrographical science] that the St. Marie and Elizabeth springs, although outside of the boundaries of the "commune" of Vichy, had a community of origin with all the mineral-water springs of the basin of Vichy, and that consequently the formula: "Natural mineral water of Vichy," was applicable to them, but that the defendant company had no right, from this fact alone, to take the above-mentioned name, and to thus attribute to itself an inexact description to the prejudice of the rights of which the defendant company had the concession.

That as a matter of fact the property of the defendant company included only the two springs Elizabeth and St. Marie, situ-
276 ated in the basin of Vichy, it was true, but at a distance of three kilometres from the "commune" of Vichy, whilst the Cie Fermière, besides being the owner of two springs outside the territory of the said "commune," had the concession of seven other springs in the basin of Vichy and within the boundaries of the "commune" of the same name.

That moreover it was with a view to disloyal competition "concurrence déloyale" that the defendant company had taken a name that could give rise to confusion, and that it was easy to prove it.

That under these circumstances the Cie Fermière had a right to require from the defendant company a cessation of acts of disloyal competition, by obliging it to modify a name which was prejudicial to acquired rights.

That furthermore a judgment of the court of Riom of the 10th January, 1876, in an action pending between the Cie Fermière and a certain Bertrand, owner at that time of the rights of the defendant company, the terms of which decision could not be mistaken by the latter, had ordered particularly that to the word "vichy" displayed on the labels of the bottles, should thereafter be added uniformly and on the same line, the words: "natural mineral water of * * *."

That, however, the defendant company neglected to observe these directions and printed alone and displayed on an entire line the words: "Eau de Vichy."

That consequently the necessity arose of obliging it to reproduce textually the formula directed by the court of Riom and this under a penalty to be fixed by the tribunal for every violation.

That lastly the defendant company caused to appear every day in numerous newspapers published in Paris, in the provinces and abroad, advertisements and articles in which, for the same purpose of disloyal competition, the word "Cusset" was suppressed, and this, notwithstanding that the judgment of the court of Riom
277 above mentioned, ordered, with a view to avoid all confusion, that the mention "Cusset, Vichy" employed by Bertrand to designate her springs, should be replaced by that of "Cusset, near Vichy."

That the principles by virtue of which this modification had been ordered on the labels of the bottles, applied equally to all other means of advertising.

That finally a grave prejudice to the Cie Fermière had resulted from the facts constituting disloyal competition above cited, for which reparation was due.

That a pecuniary condemnation would be an insufficient reparation, and that the only effective reparation of the prejudice caused would be the insertion at the expense of the defendant company of the judgment to be delivered in the present action in ten newspapers published in Paris, 15 newspapers published in the departments and 10 newspapers published abroad.

In virtue of an ordinance rendered by the president of the civil tribunal of the Seine on the 17th day of October, 1879, registered and pursuant to the summons of Gillet, an officer of the court, residing in Paris, dated the 24th day of October, 1879, recorded, the Cie Propriétaire is summoned to appear within three clear days, the time specified in said ordinance, in order:

To hear itself directed, within 15 days of the judgment to be delivered, to modify the name taken by it, in such a manner as to avoid all confusion between the two companies. If not, and in default of so doing within the time specified, and such time being passed, to hear itself condemned to pay to the plaintiff company the sum of 1000 francs a day for each day's delay during one month, after which period judgment to be enforced.

To hear itself ordered within the same time to print on the labels of its bottles in one single line and in uniform characters the formula:

"Natural mineral waters of Vichy," employed by it up to the
278 present time; and to cause this denomination to be followed by the words: "At Cusset, near Vichy," printed in letters of the same size. If not and in default by the said company so to do within the said time and such time being passed, to hear itself at once condemned to pay to the plaintiff company the sum of 1000 francs for each violation proved.

Lastly, to hear itself ordered to indicate, in all advertisements that it may publish in newspapers subsequent to the date of the judgment to be delivered, and in all its other methods of advertising, the topographical situation of the springs it operates, and to indicate this situation by adding immediately after the names of the springs Elizabeth and St. Marie, and in the same characters, the words: "At Cusset, near Vichy." If not, and on failure by the said company so to do, to hear itself now condemned to pay to the plaintiff company the sum of 1000 francs for each violation proved.

And for the prejudice caused, to be ordered to insert the judgment to be delivered in 10 newspapers published in Paris, 15 published in the provinces and 10 published abroad, such newspapers to be chosen by the plaintiff company, and the expenses of the insertions to be defrayed by the defendant.

In consequence, to hear itself now condemned to pay the cost of the insertions so made on production of the newspapers' accounts regularly receipted.

To be condemned to provisionally execute the judgment to be delivered, notwithstanding appeal and without security. To hear itself condemned to pay all costs.

On the serving of this summons and complaint, Paul Roche having appeared as attorney for the plaintiff company, Me Debladis put in a written appearance as attorney for the defendant on October 28th, 1879.

By a written registered instrument dated the 3rd January, 1880,
the Cie Fermière served on Me Debladis, attorney for the de-
279 fendant company, its pleadings in which it prayed the tribunal to render judgment in their favor in conformity with

the summons and complaint which initiated the present action, dated the 24th October, 1879, and to condemn the defendant company in costs, with allowance to Me Paul Roche, attorney, conformably to law.

In a pleading dated the 25th day of January, 1880, the defendant company served its answer on Me Paul Roche, in which, claiming that the plaintiff company's complaint of disloyal competition was unfounded, that as a matter of fact the Cie Propriétaire could not be charged with such competition.

That it was a fact, without any importance, that the said company was the operator or owner of the Elizabeth and St. Marie springs, that in reality the latter designation belonged to it, and that this part of the complaint should be dismissed.

That in law the Cie Fermière had no rights acquired from the defendant company.

That the judgment of the court of Riom could not be cited against it.

That in any event the Cie Fermière drew from it, to its advantage, conclusions which were not justified.

That putting on one side this judgment, which is not properly opposable to the defendant company, and examining one by one the grievances alleged against it, there was not found any possible confusion in the name, nor in the labels, nor in the methods of advertising; that the right to take the name of vichy could not be denied, for the company obtained its waters from the basin of Vichy itself.

That the number of springs operated was a matter of little consequence, and, moreover, the defendant company took the most express exception to the quantity and the pretended springs alleged to be operated by the Cie Fermière.

That this company has not and cannot have for itself alone the monopoly of the waters of Vichy.

280 That so far from that being the case, the neighboring springs are operated under the name of waters of Vichy by other persons, and that the defendant company does not complain of it, it not being possible so to do. That putting aside the judgment of the court of Riom, no intention to throw confusion in the mind of the public could be discovered in the manner in which the labels and advertisements of the company were drawn up, and that as a matter of fact it had not been possible for such confusion to arise. That the letters produced by the plaintiff company are far from being an argument, the name of the springs Elizabeth and St. Marie being mentioned they ought to have been returned to the Cie Propriétaire. It prayed the tribunal to dismiss the complaint of the Cie Fermière and to condemn it to pay costs, including allowance to Me Debladis conformably to law.

By a written document dated the 15th of December, 1880, the Cie Fermière served a complaint on the Cie de Cusset in which, claiming that the Cie des Eaux de Cusset had not ceased in its advertisements to vaunt the merit of its waters as compared with those of the plaintiff company.

That it had been judicially decided that such a comparison constituted disloyal competition, it prayed the tribunal, while rendering a verdict in its favor as regards its previous demands, to forbid the defendant company to mention in its labels, prospectuses and advertisements either specifically or generally, under pretext of comparison or any other pretext, the vichy waters and springs operated by the Cie Fermière, and this under penalty of a fine of 1,000 francs for each violation proved.

To order the suppression from all labels, prospectuses, advertisements and printed matter of the said defendent company, of all mention of the springs, waters and products generally whatsoever of the Cie Fermière, and to condemn the defendant company to pay costs, including those of Me Paul Roche, attorney.

281 Paragraph II.

Counter-claim.

The Compagnie Propriétaire des Eaux Minérales Naturelles de Vichy, springs St. Elizabeth and St. Marie, at Cusset, near Vichy, claiming that the Cie Fermière claimed a title, right and monopoly which did not belong to it. That so far from confining itself to the name which it had drawn from the concession accorded to it by the State, it took constantly different names such as "Compagnie des Eaux de Vichy," calculated to produce confusion prejudicial to the Cie Propriétaire.

That, moreover, although it recognizes in the complaint the community of origin of the waters derived from the springs situated within the territory of the "commune" of Vichy, it publishes circulars the tendency of which is to create the impression that it alone operates springs in the basin of Vichy, and that it is an abuse on the part of proprietors of other springs to use the term, "Eau de Vichy."

That it was the object of the complaint in which the Cie Propriétaire was defendant (these motives being only mentioned as a moral consideration), and that what the Cie Propriétaire demanded today against the Cie Fermière was the total suppression of the title which it unjustifiably adopted, creating by this suppression an unfair competition with the other owners of springs.

That in fact a ministerial decree of the 29th of March, 1877, abolished the inspection of the salts and lozenges manufactured by the Cie Fermière de l'E. T. de Vichy; that the article of the ministerial decree of 1857, which established this inspection was abrogated, and that, notwithstanding, the Cie Fermière none the less sold its products with the mention "Stamped by the government," or "Ask for the government stamp," to which inspection the company is no longer required to submit, discrediting in this manner other products.

282 That all these facts constitute an unfair competition, which should be suppressed under penalty of the payment of damages.

In virtue of an ordinance made by the president of the civil tribunal of the Seine, and pursuant to the writ of Giraud, sheriff, residing at Paris, dated the 17th January, 1880, recorded, the Cie Fermière de l'E. T. de Vichy, is summoned to appear by attorney on the 21st day of January, 1880, at the session and before the president and judges composing the third chamber of the civil tribunal of the Seine in order:

To hear itself forbidden to employ either in its labels, advertisements or posters the words: "Stamped by the government," or "Ask for the government stamp." If not, and in default of so doing within 15 days of the service of the judgment to be delivered, to hear itself condemned to pay to the plaintiff the sum of 1000 francs for each day's delay during two months, after which time the damages are now fixed at 1,000 francs for each subsequent violation proved, and for the prejudice caused to hear ordered the insertion of the judgment to be delivered in 40 newspapers published in Paris, the provinces and abroad at the expense of the Cie Fermière. And to hear itself condemned to pay the costs.

On the service of this summons and complaint in writing, dated the 14th January, 1880, recorded, in which Me Debladis appears as attorney for the plaintiff company in the counter-action: By a written document dated the 20th January, 1880, the Cie Propriétaire served its summons and complaint on Paul Roche, attorney for the Cie Fermière, praying that the tribunal render judgment in its favor in accordance with the complaint which initiated the action, and condemn the defendant company to pay the costs including allowance to Me Debladis conformably to law.

283 By a written document, dated the 4th March, 1880, Me Paul Roche served his answer on Me Debladis, praying that the tribunal would dismiss the complaint, with costs, including allowance to Me Paul Roche, attorney, according to law.

Paragraph III.

The Actions Joined.

In this stage, and after the injunction of the counter-claim with the principal action, the matter came up for trial at the sitting of this day.

The counsel of the parties, assisted by their attorneys, appeared at the bar, and took up and developed their pleadings, and requested judgment confirming the same; the ministère public was also heard on the matter.

Points of Law.

Ought the tribunal to declare that the Cie Propriétaire des Eaux Minérales de Vichy, at Cusset, near Vichy [Allier], had been guilty towards the Cie Fermière de l'E. T. de Vichy, of unfair competition?

Ought it to condemn the Cie Propriétaire to modify its name, in default of which it should pay damages of 1000 francs for every

day's delay during one month, after which judgment should be enforced?

Ought it to condemn the said company to print on the labels of its bottles in one single line and in uniform characters the formula: Natural mineral waters of Vichy, and to add immediately after these words: At Cusset, near Vichy, in characters of the same size?

Ought it to direct it from and after the date of the judgment to indicate in all its advertisements the topographical situation of the springs, and to indicate this situation by adding immediately after the names of the springs Elizabeth and St. Marie, and in the
284 same characters, the words: "Cusset, near Vichy," in default of which it should be condemned to pay to the plaintiff company 1000 francs for each violation proved?

Ought it to order the insertion of the judgment to be delivered in 10 newspapers published in Paris, 15 in the departments and 10 abroad, such newspapers to be chosen by the plaintiff company?

Ought it to forbid the defendant company to make any allusion whatever to the waters of the Cie Fermière in its labels, prospectuses and printed matter?

Ought it to order the suppression from the said prospectuses, advertisements, labels and printed matter, of every mention of the springs, waters and products generally whatsoever of the plaintiff company?

Ought it to order the provisional execution of the judgment to be delivered, notwithstanding appeal and without security?

Ought it on the contrary to dismiss the complaint of the Cie Fermière?

Ought it, basing its judgment on the pleadings of the counterclaim, forbid the defendant company in the said action, to employ either in its labels its advertisements or on its premises the words: Stamped by the government; and in default by it to observe such order within 15 days from the service of such judgment, to condemn it to pay to the Cie Propriétaire 1000 francs for each day's delay, after which it should be liable to pay 1000 francs for each subsequent violation proved?

Ought it to order the insertion of the judgment to be delivered in 40 newspaper published in Paris, in the provinces and abroad at the expense of the defendant company?

Ought it on the contrary to dismiss purely and simply the complaint of the Compagnie de Cusset?

What ought it to decide on the question of costs?

As witness these presents, &c.

(Signed) PAUL ROCHE.

285 The tribunal, having heard the complaint, answer and pleadings of Péronne, counsel, assisted by Paul Roche, attorney of the Cie Fermière de l'E. T. de Vichy; of Bozérian, counsel, assisted by Debladis, attorney of the Cie Propriétaire des Eaux Minérales Naturelles de Vichy, Elizabeth and St. Marie springs,

and the ministère public; having deliberated thereon according to law, and judging in first instance:

Joins the actions in view of their close connection and delivers a single judgment for the whole.

With regard to the principal action:

Whereas by a written document dated the 24th October, 1879, the Cie Fermière de l'E. T. de Vichy, acting in this action by Deniére, the president of its board of directors, summoned for unfair competition the Cie Propriétaire des Eaux Minérales Naturelles de Vichy, springs: Elizabeth and St. Marie at Cusset, near Vichy (Allier).

Whereas on the one hand the plaintiff company has held a concession since the 11th of June, 1853, of several springs belonging to the State, and most of them situated in the "commune" of Vichy, canton of Cusset, arrondissement of La Paline, one of them, Mesdames, in the "commune" of Cusset, and another bearing the same name, in the "commune" of Hauterive, arrondissement of Gannat.

Whereas on the other hand the defendant company, constituted by a notarial deed dated the 9th August, 1878, acquired from a certain Bertrand the two springs, Elizabeth and St. Marie above mentioned.

Whereas the Cie Fermière of the springs of the State complains:

1st. That both by the composition of its name and the arrangement of its labels, as well as by the tenor of its different appeals to the public, the company owning private springs has created a damaging confusion between the two companies and their products.

286 2d. That the new company has disparaged and tried to depreciate, by its labels, prospectuses and advertisements the value of the springs exploited by the old company.

Whereas in principle commercial and industrial liberty is limited in common with all other kinds by respect for rights and personal actions, that is to say for the liberty of others;

Whereas commercial rivalry in order to be allowable must arise only from that emulation which consists in delivering, if possible, to consumers, superior products sold cheaper, but that it cannot be allowable either to create prejudicial confusion with competitors or to have recourse to disparagement or attack against them;

In fact, and as regards the name:

Whereas undoubtedly the custom has been admitted and practised from the beginning by the Cie Fermière (which it may be added enjoyed at that time a sort of practical monopoly) to give the generic name of Eau de Vichy to all the springs which, without being situated within the "commune" itself, but possessing identical or analogous qualities of therapeutics, emanate from the same hydrographical region which may be called generally the basin of Vichy;

But whereas the title chosen by the defendant company is inexact in other respects, that it tends particularly to convey the impression, from the first part of the formula adopted, that this company is the owner not only of the Elizabeth and St. Marie springs, at Cusset,

near Vichy, but also in a general way, of the natural mineral waters of Vichy, whereas the State, the lessor of the Compagnie Fermière, whose operations commenced 20 years before those of the defendant company, is the real proprietor of the greater part of these waters;

Whereas this appellation has the double inconvenience:

287 1st. Of giving a sort of unwarrantable pre-eminence over the Cie Fermière de Vichy to the company calling itself proprietor not of waters, but of the waters of Vichy, whereas it only owns in reality two springs, both of which are situated at Cusset.

2d. Of creating in the mind of the public a confusion between the two companies which has become apparent several times (as is proved by the plaintiff company) by telegrams, letters, and orders having miscarried on account of the address and destination.

Whereas, it is just in consequence to modify the name employed by the defendant company, which must in future, in order to convey the true state of facts, be formulated as follows:

Proprietary Company of the Elizabeth and St. Marie springs, at Cusset, near Vichy (Allier)—natural mineral waters of Vichy.

With regard to the question of labels, prospectuses and advertisements:

Whereas, the labels put on its bottles by the Company of Cusset bear in big characters of from 15 to 16 millimetres the words: Waters of Vichy; on the next line, in letters of from 5 to 6 millimetres the words: Elizabeth and St. Marie springs, and underneath in letters of from 3 to 4 millimetres the words: at Cusset, near Vichy;

Whereas, the words: Waters of Vichy, repeated a number of times in big letters on each label, whilst the word Cusset is only found on it once and in letters much less apparent, attract and retain almost exclusively the attention;

Whereas, further in some advertisements inserted in several newspapers, it has even been voluntarily omitted by the defendant company,

That thus buyers were by this error led to believe that the 288 waters sent out from the thermal establishment of St. Marie at Cusset came from the much older and better-known establishment of Vichy;

Whereas, in order to put an end to this confusion, unavoidable for a large number of purchasers under existing conditions, it becomes proper to order that the defendant company shall in future put on its labels the last words: "At Cusset, near Vichy," in identical characters with those employed for the words: "Water of Vichy," and the intermediate words: "Elizabeth and St. Marie springs," in letters of at least half the size.

Whereas, in the second place, the labels, advertisements and prospectuses of the defendant company contain comparisons unfavorable to the springs of the plaintiff company, and this unnecessarily, whether from the point of view of the chemical composition of the waters or from that of their preservation and exceptional advantages of their employment at a distance from the place of putting up;

Whereas, if the habitual bombast and exaggeration of advertisements may not be condemned from a legal point of view, this tolerance must cease when, instead of confining itself to immeasurably exalting the excellence of its products, a company or a tradesman by a regrettable inroad on the domain of others, spontaneously and directly disparages and depreciates the products of a rival.

Whereas, it becomes necessary in consequence to order the suppression from the labels, prospectuses and advertisements of the Company de Cusset of every statement that is not proved by a valid document drawn up after hearing both parties, and the object of which is to establish to its advantage a pretended inferiority of the products of the Company of Vichy, statements claiming for instance:

1st. That the Elizabeth spring contain more bicarbonate of soda and more magnesia than the other springs of Vichy;

289 2nd. That the Elizabeth and St. Marie springs preserve their salts in a state of perfect dissolution much longer than the ancient spring of the Célestins, which changes less than any of the springs of Vichy;

Whereas, it is likewise desirable to suppress from the prospectuses and advertisements of the company of Cusset:

1st. The statements relating particularly, according to these prospectuses, to the comparative analyses of the Elizabeth and St. Marie springs with the other springs of Vichy by the Academy of Medicine of Paris, these comparisons being incomplete and consequently insufficient to completely inform the public, in that they apply only to some and not to all of the springs operated by the Vichy company.

2nd. The double affirmation that the Elizabeth spring contains more carbonate of soda and five times more magnesia than the springs of Vichy, and that the waters of the said spring alone of all the springs of Vichy have not lost a single milligram of their mineral elements when they arrive in Paris.

3rd. The statement that many invalids, after having vainly hoped during several years for a cure from the springs of Vichy, have obtained in a single season sovereign results at the Elizabeth spring, successes, it is added, which can only be attributed to the superior doses of arsenic and magnesia, over those contained in the springs of Vichy.

4th. The recital of a marvellous cure related in the following manner: Fourteen sick soldiers, after having undergone a thermal treatment of from 30 to 40 days at the military hospital of Vichy, and not having derived any improvement from the waters and baths of Vichy, most of them in a state of great gravity, two

290 in a desperate condition, were sent to the Hospital de Cusset, where one of them, Hippolyte Harisard, a non-commissioned officer, was carried from Vichy on an ambulance; all have been treated with the waters and baths of Cusset.

After a stay at the hospital, the length of which was from six to thirty days, eleven left cured, and the other three have improved.

4th. The further declaration that the water of the Elizabeth spring is without a rival, and cannot be replaced by any other; and that finally it is the only one of the waters of Vichy which preserves its minerals; that is to say, all its curative properties, after transportation.

With regard to the counter-claim:

Whereas, the Compagnie Propriétaire of the Elizabeth and St. Marie springs summoned on the 9th of January, 1880, the Compagnie Fermière de l'E. T. de Vichy, for having unjustifiably used the expression, "Stamped by the government" on its boxes, phials and bottles employed in the sale of the salts and lozenges manufactured in this establishment, at a time when this inspection, established by a ministerial decree of the 2d of March, 1857, had been abolished by another decree dated the 29th of March, 1877, confirmed on the 5th of December, 1879, by the council of state to whom the company of Vichy had appealed.

Whereas the decree of the 29th of March 1877 had been provisionally executed from the 25th April following, by the special commissioner of Vichy, who at that time required the representative of the Compagnie Fermière to deliver over to him gratuitously 17,780 government stamps and bands which had already been supplied by the government to the above-named company at the latter's expense, which stamps and bands had on the 25th of April 1877 not yet been used, though they were intended to be placed on the packages of the Company of Vichy.

291 Whereas nevertheless the official who acted for the government in this matter left in the possession of the company a certain quantity of boxes and half-boxes of lozenges and bottles and phials of salts, already prepared, which at that time were in its warehouses; without it being necessary to examine whether the company owning the Elizabeth and St. Marie springs is entitled in any event to demand reparation for violations of the above-mentioned governmental decree which the adverse company might commit;

Whereas the Company of Cusset fails to prove that the Company of Vichy has violated the ministerial decree of the 29th of March in selling after that date articles bearing the words "Stamped by the government," the few boxes of this character seized having been sold previously;

Whereas moreover the Cie Fermière has used its best efforts to prevent violations of the said decree, by sending notices to its correspondents; that therefore the counter-claim is not justified:

For these reasons:

Declares the contention of the Compagnie Propriètaire des Sources Elizabeth & St. Marie at Cusset, near Vichy, groundless, and dismisses it; says that the charges of unfair competition made against it are judicially proved; orders that within one month from the service of the present judgment the defendant company in the principal action shall alter the form of its name so as to read as follows:

Compagnie Propriétaire des Sources Elizabeth & St. Marie, at Cusset, near Vichy [Allier]: Natural Mineral Waters of Vichy; says also that this company must never omit in its prospectuses, announcements and advertisements, to insert in visible characters after the words: "Elizabeth & St. Marie springs," the words: "At Cusset, near Vichy."

292 And lastly orders that it must within the same time:

1st. Put on the labels of the bottles to be sold by it from this time forward the words: "Water of Vichy" and the words: "At Cusset, near Vichy," in letters identical in height and thickness; and the intermediate words: Elizabeth and St. Marie springs, in letters of at least half the size.

2nd. Omit from its labels, prospectuses, announcements and advertisements all expressions intended to prove, by comparison or otherwise, the alleged inferiority of the products sold by the Compagnie Fermière, reserving further judgment in case of violation of these directions;

Orders the publication of the present judgment in six newspapers to be selected by the Compagnie de Vichy and at the expense of the Compagnie de Cusset, the cost of each insertion not to exceed 200 francs. Condemns it consequently to pay at once to the Compagnie Fermière the amount of the cost of these insertions on production of the receipts of the newspapers chosen;

Says that there is no necessity to order the provisional execution of the judgment, the case not being provided for by art. 135 of the Code of Civil Procedure, and condemns the Compagnie Propriétaire des Sources Elizabeth & St. Marie to pay all costs, including allowance to Paul Roche, attorney, who has claimed it as prescribed by law.

(Signed) PERROT DE CHEZELLE ET MAREL.

Done and judged by Messrs. Perrot de Chezelle, president, and Monsarrat & Andemar, judges. In presence of Mr. Commoy, substitute, assisted by Morel, clerk.

The 19th January, 1881.

In testimony whereof the minutes are signed by the president and the clerk.

293 Registered at Paris, the 5th February, 1881, folio 200, division 4. Received for damages at 2% 24 francs, for two dispositions, 7.50 frs. each: 15 fcs; and for décimes (tenths) frs. 9.75.

(Signed) LE RECEVEUR.

For copying,

(Signed) Illegible.

REP. OF FRANCE *vs.* SCHULTZ.

DEFENDANT'S EXHIBIT TRANSLATION SITTENFELD PUBLICATION, DEC. 1, 1898. F. M. A., Ex'r.

On the manufacture of mineral waters by chemical means in the spring establishments of Struve.

Berlin.

Printed by Julius Sittenfeld, 1841.

The well-founded reputation of Struve's mineral waters is in fact based on the point that they contain all the constituent elements of the springs, even the slightest of them; that they are manufactured with the most scrupulous accuracy under exclusion of every disparaging influence and that each portion of the complicated operations from which the chemical preparation ensues is subjected to the most rigid and exact supervision.

While chemistry has for a long time assumed as a proved fact the entire similarity of the mineral waters which were made by means of chemistry with those issuing from the earth, these waters had to undergo a second probation and this was the much more difficult probation of medicinal experience. This probation
294 has been experienced by them for almost a quarter of a century in the different countries of Europe under the hands of the most renowned physicians. There is now no physician who ever subjected the effects of the waters in Struve's spring establishment to an impartial investigation who did not reach the conviction that these effects are in no way different from those observed at the springs. The advantages which proceed from a joining of the foremost and most renowned medicinal waters of the world at any one place are very great, and this is particularly appreciated by those physicians who live at places where those spring establishments are. How often, for instance, is the medicinal effect produced in the establishment by the mixture of two waters, as for instance Ems and Carlsbad, Vichy and Carlsbad, an effect which could not be produced by a single water.

The Export of Mineral Waters.

It may be permitted to us to say a few words on the bottling of the mineral waters and the advantages which follow from the method pursued in Struve's spring establishments. If one cannot drink the water in the original condition in which it issues from the earth or out of our chemical laboratories, one is always subjected to the danger to find the same deprived of its most effective constituents, and energies, and in a condition of disintegration, which totally spoils it. Now, this fact that the mineral waters

which were sent from the natural springs in bottles or jars experienced such a disintegration which made the same entirely different from those directly taken from the spring, is just the reason for the founding of the establishments to prepare mineral waters by chemical means. If it was possible to get the water of the springs in such a condition that it would not experience any essential change, the water of the springs could be sent in bottles to
295 every place, and the water of these jars would represent the water of the springs. Experience, however, has shown most assuredly that this is not so. The cause of the disintegration of the mineral waters is atmospherical air which comes into contact with the water at the spring when the bottles are filled. It was the object in preparing the mineral waters to exclude the atmospherical influence, an object which has been fully accomplished with the help of chemistry and mechanics. (Here follows description of apparatus.)

The following mineral waters are sent from the spring establishments: (Here follows a list of twenty-four waters, which continues:)

Carlsbad Neubrunnen for three and four goblets:

The ingredients for preparing these mineral waters are contained first in bottles labeled "Carlsbader Neubrunnen" for three goblets; second in a bottle (or several bottles in case preparation for a longer time is to be provided for) with the label "Solution for Carlsbad."

(P. 23.) The course of drinking begins in the spring establishment with the end of May or the beginning of June (in Berlin on June 1st) and lasts until end of September, in England until Christmas. The morning hours from 5 to 9 o'clock are selected in the establishments as the best time for drinking. During this time the following waters are distributed in the condition in which they come from the cylinders in which they are prepared:

Warm springs.

Of Carlsbad: Sprudel, Neubrunnen, Muhlbrunnen, Theresenbrunnen.

Of Ems: Kesselbrunnen, Kränchen.

Of Vichy: The Gitter Quelle (Grande Grille).

Cold springs.

(Here follows a list of fifteen European springs.)

296 DEFENDANT'S EXHIBIT POUILLET TRANSLATION.

Treatise of Trade-marks and Improper Competition.

By

Eugene Pouillet.

Second edition.

Paris, 1883.

Section 408.

Page 394: Names of mineral waters: Artificial preparation.

The name of a mineral water belongs exclusively to its proprietor in such manner that the water of another origin cannot be sold, without offence, under the same name. However, this right does not go so far as to prevent one who manufactures the same water artificially from calling the same by the name which is suitable to it, provided, however, he avoids all confusion with the natural waters. If this was different, the proprietor of the natural water would improperly extend his right to the artificial water and would confiscate to his profit a portion of the industrial progress.

Considered in this sense that the proprietor of a spring may not claim the private right to the name of the spring to the point of forbidding its use to those who manufacture similar waters artificially, it suffices that the manufacturer of the artificial waters makes his label in such fashion as to render all confusion impossible; to admit a contrary notion would be to prohibit the artificial manufacture and to deprive of their assistance those who live too far to use them. (Lyon, May 7th, 1841, Aff. Pidot & Guillaume, Dall, 42. 2. 27.)

297 DEFENDANT'S EXHIBIT BEDARRIDE TRANSLATION.

Commercial Law.

Commentary upon the Laws Relating to

Letters Patent,

to names of manufacturers and places of fabrication, and to trade-marks, followed by an appendix containing the official and legislative acts and documents,

by J. Bédarride,

Advocate to the imperial court at Aix, ex-batonnier, corresponding member of the Legislative Academy of Toulouse.

Second volume.

Paris, Aix,

1869.

§ 790. The rights of proprietors of springs to the ownership of mineral waters could not be contested, as they alone are in a position

to sell them. But these waters derive their value and efficacy from their chemical composition, and that composition being made public by analysis is today universally known.

All druggists, all chemists are therefore free to manufacture the various and best-known mineral waters.

There is in the fact of such manufacture and the sale to which it gives occasion a dangerous competition for the proprietors of springs.

No matter what price they may put to natural waters, the cost of transportation and the risk thereof must be added to it and paid for by the buyer, who will in preference go to the manufacturer of the artificial waters which will instantly meet his demand.

Alarmed by this competition, the proprietors attempted to
298 prevent this. It is thus that the owners of the St. Alban waters sued the Messrs. Pedot & Vuillanne in order to have them enjoined from manufacturing and selling gaseous waters under the name of "St. Alban."

These answered that their manufacture was a legal one, and which no law forbade, and that therefore they would continue to sell their products; all that could be required of them should be that they should refrain from presenting their products as natural waters of St. Alban, which condition had been complied with by their adding to the title of their waters the letter "F," meaning "factitious," offering however in future to print the word in full upon their labels and upon their seal.

In consideration of that offer, and upon condition of its fulfillment, the court of Lyon, by a decision which the court confirmed on May 7th, 1841, refused to sanction the pretensions of the claimants and declared: that it cannot be admitted that their establishment gives them exclusive right to use the name "St. Alban;" that the fact that the products of their manufacture are different from the products of the other suffices to prevent them from claiming such rights; and that if their theory were sustained, a general suppression of the manufacture of artificial waters would result, so that consumers, however far from the springs, would be compelled to come to those springs.

The legal meaning of this decision cannot be disregarded, and is rendered still more evident by the fact that mineral waters are real remedies and therefore should be within easy reach everywhere, being accessible to the poor as well as to the rich, and susceptible of being employed whenever it need be.

What would be the position of the invalid if it became urgent for him to seek the remedy at a distance of two or three hundred miles from his residence and pay two or three times the value of the goods for their transportation?

299 Should his income not permit him to make such outlay, should he be deprived of the one remedy which will restore him to health and give him the strength to earn his bread and that of his family?

Could such interests as those be sacrificed to the fear of a competition which is, moreover, impossible? No one desiring the natural spring water will be tempted to mistake the artificial water thereof for it, and those who want and are able to make use of the former will surely not address themselves for it to the manufacturers of the latter.

All that is possible and just is to see to it that the manufacturers do not deceive the buyer in presenting as natural the artificial waters, and do not stoop to disloyal competition. For this it is sufficient, to quote the wording of the court, to compel the manufacturer to qualify his waters as "factitious" or "artificial."

300 REP. OF FRANCE *vs.* SCHULTZ.

DEFENDANT'S EXHIBIT TRANSLATION OF EXHIBIT BACTERIOLOGIE, DEC. 1, 1898. F. M. A., Ex'r.

Bacteriology
of the Mineral Waters of
Vichy, St. Yorre, Hauterive, and Cusset.

By

TH. ROMAN,
Military pharmacist, serving with the rank of major of the 1st class at the Military Thermal Hospital of Vichy, Knight of the Legion of Honor.

E. COLIN,
Military pharmacist, serving with the rank of major of the 2nd class at the Military Hospital of Vichy.

Paris:
J. B. Baillière & Son, publishers,
19 Rue Hautefeuille (near Boulevard Saint Germain).
1892.

(Page 1:)

Introduction.

The natural mineral-water springs of the Grande Grille and Hopital, to which the city of Vichy owes its universal reputation, are very similar from the standpoint of chemical analysis; their alkaline reaction, the nature of the salts entering into their composition, and above all their temperature constitute, *a priori*, an excellent medium of culture for the atmospheric germs which mingle with them either at the orifice of the spring or in the pipes which lead these waters to their bottling place, or still in the course of the various manipulations to which they are subjected before their delivery to consumers.

301 It has seemed interesting to us to study the influence which the different modes of handling them have upon their gain in bacteria, while journeying from the spring to the drinker's glass and from the bottling faucet into the receptacle used for their shipment.

The results obtained for the Grande Grille and the Hopital have encouraged us to extend our researches to the cold waters, such as the Celestins, Saint Yorre, Hauterive and Cusset; also to the wells of the Parc and of Mesdames and to most of the mineral springs exploited by private individuals.

Dr. Poncet, chief surgeon of the Hotel Dieu (hospital) of Vichy, had preceded us in these studies and his second work on "The Microbes of the Grande Grille," published on February 20, 1891, contains very useful information upon the number and nature of micro-organisms which he has found in this water. But these studies having been made in winter, which is a time when the air is less charged with germs, and when the presence of dust produced at other times by the incessant going and coming of drinkers around the springs need not be feared, have led him to results which, as regards the numbers of germs found, differ somewhat from our results; but these slight differences are of merely relative importance from a practical standpoint, and therefore could not invalidate or even weaken our conclusions as brought forth at the end of this modest work.

We extend here to M. Lenoir, head physician of the military hospital, the expression of our gratitude for the encouragement which he gave us in the course of our researches. We also thank the director of the State's Farming Company of Vichy for his kindness in giving orders to his employees to allow us to draw water from the wells at will; we also thank the owners of the Larbaud St. Yorre and Mallat St. Yorre springs, who put at our disposal all possible means of making on the spot tests which would have led to
302 errors had they been made at a distance from the springs.

VICHY, *September 15th*, 1891.

* * * * * * *

(Page 12:)

Memorandum of Results Arrived at.

In the whole, the tests upon the water from the Grande Grille have shown:

1 at the basin.....	8	colonies per c. m. cube.
2 at the glass.....	4	*id.*
3 at the overflow trough.....	375	*id.*
4 at the bottling faucet	35	*id.*
5 in the bottles, over.....	100.000	*id.*

1. The basin.—Admitting with Pasteur and Joubert that the spring water, when taken at its natural flow, before it has come in contact with the atmosphere, is sterile, it must be inferred that the creation of germs in the water is effected by the air which communicates the germs to it.

Another, and perhaps the most serious cause of rendering the

water impure, is the introduction into the basin of a glass previously washed with the water in the trough which is full of bacteria, and rinsed insufficiently with the water from the fountain jet.

2. The glass.—The impurity of the water when in the glass is easily explained by the fact of its being constantly exposed to dust created by daily sweepings of the gallery and the constant walking of drinkers, and the germs thus deposited upon the damp inner surface of the glass are given all necessary time to develop during the lapse of hours which separates the distribution of the waters in the evenings from that in the mornings.

And moreover, the public glass, which is always in use, is not likely to contain so many germs as the private glass, the use
303 of which is limited to suit the drinker; how great may be the quantity of germs clinging to and generating therein? It would indeed be interesting to secure statistics showing their growth after they have had time to gather in sufficiently large numbers to form a layer so compact as to render an attempt to wash it useless. Does not this permeable layer offer protection to those numerous microbes which dwell therein?

3. The overflow trough.—The water never reaches the edge of this trough, so that the dust clings to its surface without difficulty, and subsequently finds the best conditions for the development of the germs it contains.

4. The bottling faucet.—The greater number of the colonies found in water drawn from the bottling faucet is no doubt due to the growth of germs in the pipes, the germs having made their way through the branch pipe leading from the ascending main of the spring. We will, moreover, have occasion to verify the fact that the development of colonies is in certain cases, which we will determine, produced by the length of the pipes.

5. Bottled water.—The great development of colonies in bottled waters may be ascribed to four main causes:

1. The washing of bottles in ordinary water.

2. The transportation prior to their being filled of the empty bottles which are insufficiently protected from dust, while on the road from the shipping shed to the building in which the business is carried on.

3. The storing of these bottles in a shed insufficiently protected and even generally exposed to west winds during the operation of bottling.

4. The operation of bottling being effected by means of objects naturally contaminated, such as wooden corkers, corks, &c.

304 The statistics obtained with waters bottled for not more than forty-eight hours enable us to judge of the excellence of mineral waters as a medium of culture for adulterating germs by the rapid development of micro-organisms. This abundant prolification which should, theoretically at least, be lessened by auto-infection among the micro-organisms, seems to be maintained in spite of it, and even a long time after the bottling. The analysis of waters

bottled three or four years shows in fact that the number of germs remains always considerable; yet the bottles experimented upon by us were perfectly corked, the capsule well adhering to their neck, and the cork presenting no abnormal aspect, except a black coloring, due, no doubt, to the tannate of iron (tannate de fer), or to the sulphuric emanations always evident in vichy waters at the spring.

What then is the mysterious cause of the incessant vitality of these micro-organisms, and from what element, whether mineral or organic, do they derive the substance for their support? Furthermore, what change does their presence produce in the course of time upon the composition of mineral waters? These are problems which medicine formulated long ago, and which bacteriology will no doubt solve some day.

We will treat of the efficacy of sterilization of bottles at the conclusion of this book. We will also consider whether the development of micro-organisms already existing in the water at the basin and at the bottling faucet will progress unaided by the process of bottling; finally, whether the opinion formulated by Dr. Poncet, to the effect that "the cause of the bottled water's impurity is the microbic state of the bottle" is justified by experience.

305 (Page 72:)

Vichy at home; choice of mineral waters.

Precautions to be taken in their use.

The statistics derived from tests upon bottled waters leave us little hope of preserving vichy water as pure as at the spring without altering its composition.

The dilemma presented is the following: Either you may bottle the water as it comes from the spring, that is to say, with the germs existing in it at the basin, or at the bottling faucet, and in this case progression is fatal, no matter how clean the receptacles may be, or you may heat the water to a temperature sufficient to kill the germs which it normally contains, and then, in addition to the risk of decomposition you will find no receptacles capable of resisting the interior pressure.

Therefore, the one solution left when using waters outside the spring is to employ only those waters which seem least subject to great alteration.

Moreover, the preservation of mineral waters is, as we have found, influenced in proportion by the temperature which they possess at the springs. One is led to admit that the hot waters contain an undefined organic substance which aids the development of micro-organisms.

Is the lesser prolification of germs in cold waters due to the presence of an excess of carbonic acid? We do not think so, because the gas, in spite of the asceptic power attributed to it, is not

opposed to the development of germs in sweet waters. It may at most delay the multiplication of certain species, a point which we will study in another work, as so far time has not permitted us to look into it.

Therefore, the cold waters alone present some guarantee of relative purity after they have been bottled for a period of time. That opinion is in accord with the practice which does not recog-
306 nize in the hot waters drunk outside of the spring the qualities which they possess at the fountain.

The cold springs of Mesdames, Cusset, Saint Yorre and Hauterive are marvellously pure, and the statistics derived from them have given numbers fifty times smaller than those derived from the hot springs under the same conditions.

We have noticed that vichy water decomposes easily when exposed to the air. In addition to the terreous bicarbonates, the precipitation of which begins as soon as the water emerges from the fountain, and which has taken full effect about twelve hours after the bottling, the alkaline bicarbonates themselves are slowly decomposed. For example, if a few drops of solution of phtaleine of phenol are added to a glass of vichy water which has been exposed to the air, a rosy coloring can soon be seen to manifest itself and becomes intense in forty-eight hours. This reaction indicates in an irrefutable manner the slow transformation of bicarbonates into neutral bicarbonates accomplished by contact with air.

This decomposition is experienced because often a bottle of vichy water is drunk in the course of at least three to four days after its uncorking, and it can be understood that in that time the purity of action diminishes and the water becomes alterant or purgative.

In order to avoid this partial decomposition, vichy water should be shipped in bottles of 500 c. c, or better still, 250 c. c., excluding the litre, which is almost universally used today; we recommend that the customer allow the bottles to rest in a cool place after their arrival, and that he avoid shaking the bottle in opening it, and that the dregs be never drunk.

307 United States Circuit Court, Southern District of New York.

LA REPUBLIQUE FRANCAISE ET AL.
vs.
LOUISA SCHULTZ, Executrix.

For the purposes of this case it is agreed by counsel as follows, to wit:

1. That from and after the 31st day of December, 1892, the only labels used by Carl H. Schultz, deceased, in connection with the manufacture and sale of the "vichy" water by him manufactured and sold were as follows:

ARTIFICIAL VICHY
MANUFACTURED FROM DISTILLED WATER BY
CARL H. SCHULTZ.
430-444-1ST AVE. C-P M-S NEW YORK

ARTIFICIAL VICHY
MANUFACTURED FROM PURE DISTILLED WATER BY
CARL H. SCHULTZ.

Potassium Sulphate,	20.404	Ammonium Carbonate,	0.469
Sodium Sulphate,	11.771	Calcium Carbonate,	25.003
Sodium Phosphate,	0.422	Strontium Carbonate,	0.232
Sodium Chloride,	57.878	Magnesium Carbonate,	3.529
Sodium Bromide,	0.013	Iron and Manganese,	trace.
Sodium Iodide,	0.003	Alumina,	0.078
Sodium Carbonate,	380.130	Silica,	6.406

One mineral-water glass (6 oz.) contains 13.85 grains of mineral ingredients.

which labels were used by him continuously from the time
308 of their adoption as aforesaid until his death, each siphon of the "vichy" water by him manufactured and sold having attached thereto both of said labels.

It is stipulated and agreed that this stipulation shall have the same force and effect as if the facts therein recited were established by competent testimony.

ROWLAND COX,
Counsel for Complainants.
ANTONIO KNAUTH,
Counsel for Defendant.

309 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

Being informed that there is now pending before you a suit in which La Republique Francaise and La Compagnie Fermière de l'Etablissement Thermal de Vichy are appellants and The Saratoga Vichy Spring Company is appellee which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the northern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court
310 of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of June, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 18,530. Supreme Court of the United States. No. 677, October term, 1901. La Republique Francaise *et al., vs.* The Saratoga Vichy Spring Company. Writ of certiorari. United States circuit court of appeals, second circuit. Filed Sep. 17, 1902. William Parkin, clerk.

311 To the honorable the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made, having been lately certified and filed in the office of the honorable the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and under direction of counsel for petitioner, said stipulation is hereby certified as the return to the writ of certiorari issued herein.

New York, September 17, 1902.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

312 United States Circuit Court of Appeals for the Second Circuit.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE l'Etablissement Thermal de Vichy, Complainants & Appellants,
against
THE SARATOGA VICHY SPRING COMPANY, Defendant & Appellee.

It is hereby stipulated between counsel that the certified transcript of the record in the above-entitled cause as filed with the clerk of the Supreme Court of the United States may be used and taken by the honorable the judges of the above-named United States circuit court of appeals as and for the return to the writ of certiorari in said cause heretofor- by the said Supreme Court to them issued.

Dated, September 12 1902.

EDGAR T. BRACKETT,
Counsel for Def'd't.
CHAS. BULKLEY HUBBELL,
Counsel for Complainants.

Endorsed: La Republique Francaise *et al. vs.* Saratoga Vichy Spring Co. Stipulation. United States circuit court of appeals second circuit. Filed Sep. 17, 1902. William Parkin, clerk.

[Endorsed:] United States circuit court of appeals, second circuit. La Republique Francaise *et al. v.* Saratoga Vichy Spring Co. Return to certiorari.

[Endorsed:] File No. 18,530. Supreme Court U. S. October term, 1902. Term No. 325. La Republique Francaise *et al.*, petitioners, *vs.* Saratoga Vichy Spring Company. Writ of certiorari and return. Filed Sept. 18", 1902.

Supreme Court of the United States

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT THERMAL DE VICHY,
Petitioners,
—vs.—
SARATOGA VICHY SPRING COMPANY.

OCTOBER TERM, 1901.
No. 677

Petition for Writ of Certiorari requiring the Circuit Court of Appeals for the 2nd Circuit to certify to the Supreme Court of the United States the above entitled case for its review and determination.

CHARLES BULKLEY HUBBELL,
Attorney and of Counsel for Petitioners.

Archibald Hopkins
Of Counsel

Supreme Court of the United States.

La Republique Francaise and La Compagnie Fermiere de L'Etablissement Thermal de Vichy, Petitioners, vs. Saratoga Vichy Spring Company.	October Term, 1901.

NOTICE OF MOTION.

To Saratoga Vichy Spring Company, the above-named Defendant:

Please take notice that on 19th May ~~January~~, 1902, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, a motion for a writ of *certiorari*, of which motion a copy is annexed, will be submitted to the Supreme Court of the United States at the City of Washington, D. C., for the decision of the Court thereon.

In support of said motion a petition will also be presented to the Court. A copy of the petition is herewith served upon you.

Respectfully,
Charles Bulkley Hubbell,
Attorney and of Counsel for Petitioners.

New York,

Due service of the foregoing notice of motion in the above cause is hereby admitted this day of , 1902.

Defendant,

By

SUPREME COURT,

OF THE UNITED STATES.

La Republique Francaise and La Compagnie Fermiere De l'Etablissement Thermal de Vichy, Petitioners.	October Term, 1901.
vs.	
Saratoga Vichy Spring Company, Defendant.	

MOTION.

Now come La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, by Charles Bulkley Hubbell, their attorney and counsel, and move this Honorable Court for a writ of *certiorari* directed to the Honorable the Judges of the United States Circuit Court of Appeals within and for the Second Judicial Circuit, commanding them forthwith to certify and return to this Court all proceedings by them had in the suit lately before them wherein these petitioners were appellants and said Saratoga Vichy Spring Company was appellee.

The matter involved herein relates to the question of the rights of the petitioners to be protected against the use of the name "Vichy" to denote a water not drawn from the springs at Vichy, owned by the petitioner La Republique Francaise and now leased to the petitioner La Compagnie Fermiere de l'Etablissement Thermal de Vichy. Your petitioners' rights have been held curtailed by the United States Circuit Court of Appeals for the Second Judicial Circuit, which has granted your petitioners limited relief and denied the

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prayer of your petitioners' bill of complaint in the present case that the defendant be restrained from making use of the word "Vichy" to denote a water not drawn from your petitioners' springs at Vichy.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT THERMAL DE VICHY,
Petitioners.
By CHARLES BULKLEY HUBBELL,
Their Attorney and Counsel.

Due service of the foregoing motion is hereby admitted this day of

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT THERMAL DE VICHY,
Complainants and Appellants,

AGAINST

SARATOGA VICHY SPRING COMPANY,
Defendant and Appellee.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The Petition of La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, respectfully shows:

FIRST. That your petitioner, La Republique Francaise, is an independent State and one of the sovereign powers of the earth, having its main territory and chief seat of authority in that part of the continent of Europe designated and known as "France." Your petitioner, La Compagnie Fermiere de l'Etablissement Thermal de Vichy, is a corporation duly organized and existing under and by virtue of the laws of the said La Republique Francaise. The defendant is a corporation organized and existing under the laws of the State of New York and a citizen of said State.

SECOND. That the value of the matter in dispute in the above-entitled cause, as appears by the bill of complaint therein, exclusive of interest and costs, exceeds the sum of two thousand dollars.

THIRD. That this suit was brought to restrain the use by the defendant of the word "Vichy" as the name or as part of the name or to denote a water not drawn from the springs of Vichy, which are owned by your petitioner, La Republique Francaise, and now leased to your petitioner, La Compagnie Fermiere de l'Etablissement Thermal de Vichy.

FOURTH. That the undisputed facts relating to the use by your petitioners of the word "Vichy" may be summarized as follows:

There is in France a certain commune or town namedVichy, which has been known throughout the civilized world for a long time, and as being renowned for the waters obtained from the numerous mineral springs situated in said commune, the waters of which springs have been for many years universally called and known as "Vichy" waters.

Since the treason of the Constable of Bourbon, in the year 1531, these springs have been owned by the State of France, which, under the law of France, is entitled to the exclusive use and enjoyment of the springs referred to, including the right to use the name "Vichy" in connection therewith.

Your petitioner, La Compagnie Fermiere de l'Etablissement Thermal de Vichy, is the sole lessee of said springs for a term of years, by whom the waters of the springs have been for many years bottled, offered and sold all over the civilized world.

In 1853 the waters were exported to this country under the name of "Vichy," and in 1893 the shipments to this country were about 300,000 bottles. In 1896 the entire shipments of "Vichy" amounted to nearly 10,000,000 bottles.

FIFTH. That the facts in regard to the use of the word "Vichy" by the defendant are shortly as follows:

In 1872 a spring was discovered in the township of Saratoga Springs, in the State of New York, the water of which was bottled and sold in 1873, and thereafter until 1876, by the owners of the spring, when the defendant, under the name of The Saratoga Vichy Spring Company, became the owner, and has since sold the water, using on the bottles, circulars and in its advertisements the words "Saratoga Vichy" in various forms.

Until 1896 the words "Saratoga" and "Vichy" upon the labels were substantially in the same style and size of type. In 1896 a neck label was adopted on which the word "Vichy" was displayed very prominently, and the word "Saratoga" in far less conspicuous type.

SIXTH. That the facts in regard to the use of the word "Vichy" by others in the United States which were considered by the Circuit Court and the Circuit Court of Appeals may be summarized as follows:

Factitious waters have been put upon the market in this country under the name of "Vichy" since 1862. These waters have differed widely from each other in composition, some approaching in some degree the composition of the genuine "Vichy," others being no more than ordinary water with a slight trace of chloride of sodium. Upon these waters the word "Vichy" has been used recklessly and adventurously and without any certain or definite meaning, and the word "Vichy," except as indicating that the water sold under it is drawn from the French wells, has meant nothing.

The word "Vichy" has never lost its original and true meaning, but to-day, as always, in the words of the Circuit Court of Appeals, 'Vichy' properly signifies water from the French wells."

In January, 1892, suit was commenced by the petitioners against one Schultz, a conspicuous example of the somewhat limited class who have bottled their factitious waters and represented them to be "Vichy"

and sold them as such. Until said suit was commenced against Schultz his water, and all the other factitious waters referred to, had been unblushingly labeled and represented to be "Vichy," and nothing else. After the suit was commenced Schultz changed his label by adding the word "artificial."

Schultz died before the hearing of said suit, and the case was continued against his executrix, and was not finally disposed of until after the petitioners instituted this suit against this defendant. The opinions of the Circuit Court and the Circuit Court of Appeals in the said suit against Schultz are reported in 94 Fed. Rep., 500, and 102 Fed. Rep., 154. A determination of your petitioners' rights in said suit against Schultz, except in so far as the right to recover profits was concerned, was precluded by the death of Schultz *pendente lite*.

There have been other uses of the word "Vichy" in the United States which were not referred to by the Court below, and which are, your petitioners conceive, of no possible consequence, such as the haphazard use of the word by retail druggists who draw their uncertain waters from soda fountains and the like. All such uses have been different in kind from the use of the word by your petitioners and the defendant, and do not in any way affect the sale of your petitioners' "Vichy" in the markets of the United States.

SEVENTH. That a copy of the opinion of the Circuit Court is hereto attached and marked "Exhibit A," and a copy of the opinion of the Circuit Court of Appeals is likewise attached and marked "Exhibit B," and a copy of the dissenting opinion of his Honor, Judge WALLACE, in the Circuit Court of Appeals is also attached and marked "Exhibit C."

EIGHTH. That the Circuit Court held that the case was controlled by a decision of his Honor, Judge WALLACE, in said suit brought by your petitioners against Schultz (which opinion proceeded solely upon

the ground that by reason of laches the complainants were without remedy), and dismissed the bill.

NINTH. That the Circuit Court of Appeals held that the neck label displaying the word "Vichy" more prominently than the word "Saratoga" was "in fact an untruthful label employed for an objectionable purpose," but decided that the petitioners' relief should be limited to compelling the defendant to print the word "Saratoga" "as plainly and prominently" as the word "Vichy."

TENTH. That the decision of the Circuit Court of Appeals, in so far as it proceeds upon the ground that one may use the name which denotes the goods of another provided the name be qualified by the addition of another name, is in direct conflict with the decisions in many cases decided by the Courts of Appeal of other Circuits (*e. g.* "London" to qualify "Royal" in Raymond vs. Royal Baking Powder Co., 85 Fed., 231, decided by the Court of Appeals for the Seventh Circuit, *cf.* Plant Co. vs. May Co., 105 Fed., 375, 379, decided by the Court of Appeals for the Sixth Circuit), and is in conflict with the reasoning of this Honorable Court in the case of Saxlehner vs. Eisner & Mendelson Co. (179 U. S., 19, 40, 41), which came up from the said Second Circuit, wherein it was pointed out that the addition of a distinguishing feature (in that instance an additional label) by the defendant to the appropriated *indicia* of the complainant's goods was not the relief to which the complainant was entitled, but that the defendant should be compelled to cease to use that which denoted origin from the complainant.

ELEVENTH. That in so far as the conclusion reached proceeds upon the ground that your petitioners' rights have been curtailed by the delay in instituting suit, both the United States Circuit Court and the United

States Circuit Court of Appeals committed grievous error in overlooking or disregarding the fact that the principal complainant in the case, La Republique Francaise, being a sovereign power, there could be no imputation of laches, and that consequently the right of the complainant to restrain the use of the name "Vichy" as a designation or part of a designation of water not drawn from the Vichy Springs is not affected by the delay in bringing suit.

TWELFTH. That in so far as the decisions in the Circuit Court and the Circuit Court of Appeals proceed upon the ground that your petitioners' rights have been curtailed by their delay in bringing suit, the said decision is in conflict with the rule announced by the United States Circuit Court of Appeals for the Third Circuit in the case of Actiengsellschaft, &c., vs. Amberg (109 Fed., 151), wherein the doctrine is announced that delay in bringing suit in cases of this character does not impair the right to relief against further injury unless there is also an abandonment. The decision of the Court of Appeals for the Second Circuit, and the decision of the Court of Appeals for the Third Circuit were both rendered after the decision of this Honorable Court in the case of Saxlehner vs. Eisner & Mendelson Co. (179 U. S., 19), and the rule laid down by this Honorable Court has been understood differently by the said Circuit Courts of Appeals, which said rule is one the application of which is frequently demanded, and upon which there should be no doubt or difference of opinion.

THIRTEENTH. That both the Circuit Court and the Circuit Court of Appeals committed grievous error in that both overlooked or disregarded the fact that the effect of permitting the use of the word "Vichy" upon waters not drawn from the Vichy Springs is to destroy your petitioners' trade in "Vichy" in the United States, because the waters of the defendant (paying

nothing in duties or for transportation) is sold as "Vichy," and satisfies the demand for "Vichy" (which demand is the good-will and property of your petitioners), and necessarily stands in the way of and precludes the importation and sale of the genuine "Vichy" water in the markets of the United States, which has long been a source of profit to your petitioners and a benefit and advantage to the public.

FOURTEENTH. That the decision of the Circuit Court of Appeals, your petitioners respectfully submit is subversive of the rights guaranteed to your petitioners by the treaty between the United States of America and your petitioner, La Republique Francaise, because by Article 8 of the treaty of March 20, 1887, your petitioners' "commercial name," "Vichy," was guaranteed protection in the markets of the United States, and that protection has not been afforded your petitioners; but, on the contrary, your petitioners' name "Vichy" in the markets of the United States has been in effect taken from them and handed over to the defendant and the class it represents.

FIFTEENTH. And your petitioners very respectfully represent that the rights for which they very earnestly contended have not been adjudicated; but that, on the contrary, their contentions have been disregarded, with the result that the value of the land owned by your petitioner La Republique Francaise has been impaired by permitting the waters of others to be branded and sold as "Vichy," whereby the product of your petitioners' land is by false and fraudulent representations kept out of the markets of the United States.

SIXTEENTH. That said decree of said Circuit Court of Appeals is final between the parties unless this Honorable Court shall of its own motion direct the bringing up for review of said cause.

Wherefore, your petitioners respectfully pray that a writ *certiorari* may be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to this Honorable Court on a day certain to be therein designated a full and complete transcript of the record of all proceedings of the said Circuit Court of Appeals in the said cause therein entitled "La Republique Francaise and La Compagnie Fermiere de l'Etablissement Thermal de Vichy, Complainants and Appellants, v. The Saratoga Vichy Spring Company, Defendant and Appellee," No. 29, to the end that the case may be reviewed and determined by this Honorable Court as provided in Section 6 of the Act of Congress entitled "An Act to establish Circuit Courts of Appeal, and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891; and that your petitioners may have such other and further relief in the premises as to this Court may seem appropriate and in conformity with said act; and that the said judgment of the said Circuit Court of Appeals for the Second Circuit in the said cause, in so far as it does not direct that the defendant be restrained from making use of the word "Vichy" as the name or designation, or as part of the name or designation, of water not drawn from your petitioners' spring, may be reversed by this Honorable Court.

And your petitioners will ever pray, &c.

Archibald Hopkins

Chas Bulkley Hubbell

Counsel for Petitioners

Exhibit A.

UNITED STATES CIRCUIT COURT,

NORTHERN DISTRICT OF NEW YORK.

LA REPUBLIQUE FRANÇAISE ET AL.

v.

SARATOGA VICHY SPRING COMPANY.

FINAL HEARING IN EQUITY.

ROWLAND COX, for the Complainants.
EDWARD T. BRACKETT and WALTER P. BUTLER, for the Defendant.

COXE, J.:

It is thought that this cause is ruled by the decision in La Republique Française v. Schultz, 94 Fed. Rep., 500, recently affirmed. Of course the facts are not alike. They never are. The salient features are, however, almost identical. The principles upon which the decision in the Schultz case rests are involved in the case at bar, and I see no way to avoid their application. The attempt to distinguish, though ingenious, is founded upon considerations which are too vague and unsubstantial for practical application. They do not go to the merits of the controversy. They make no breach in the principal line of defense. It would be inequitable to punish the defendant with an injunction and an accounting after exonerating the defendants in the former case. Indeed, the defense here is, in some respects, stronger than in the Schultz case.

The defendant's water has been known for twenty-six years as Saratoga Vichy, and the record shows that there has never been an attempt to palm it off on innocent buyers as the imported article. The defendant has sold it upon its merits as a natural Saratoga water. The two are different in appearance, taste and ingredients. The defendant's is a sparkling water, and for several years has been sold under a label on which the word "Saratoga" is as prominently displayed as the word "Vichy." It is true that there is a small neck label attached to the bottle on which the name "Vichy" is the more prominent, but, in view of the many other distinguishing characteristics, it seems inconceivable that any one of ordinary perception can be induced to buy the defendant's water, supposing it to be the imported Vichy. An individual stupid enough to be deceived in such circumstances is beyond the aid of a court of equity. In his case a writ *de lunatico* is a more appropriate remedy than a writ of injunction.

The bill is dismissed.

[ENDORSED:] Decision, COXE, J. Filed Feby. 19, 1900.

Exhibit B.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT THERMAL DE VICHY,

vs.

THE SARATOGA VICHY SPRING COMPANY.

SHIPMAN, C. J.

This is an appeal from a decree of the Circuit Court for the Northern District of New York, which dismissed the complainants' bill in equity to restrain the use of the word "Vichy" upon the defendant's bottles containing the water of the spring known as the Saratoga Vichy Spring and for other relief, upon the ground that the defendant's labels and advertisements improperly and unfairly misled purchasers to believe that they were buying the complainants' article and unfairly interfered with their exclusive right to the use of the word "Vichy."

The facts in regard to the title of the complainants to the spring at Vichy, and to the labels upon the bottles in which it is exported to this country and the extent of its business in the United States were stated in the opinion of this Court in the case of the same complainants against Schultz (102 Fed. Rep., 154), and are as follows:

"The existence in the commune of Vichy, in France of numerous mineral springs which have long produced water of high medicinal value is well known. The water began to be sold as early as 1716, and became popularly known as Vichy or Vichy water. The Republic of France is the owner of nearly all these springs, and by the terms of acts passed in 1853 and 1864, La Compagnie Fermiere de L'Etablissement Thermal de Vichy, hereinafter called the company, obtained the concession of the springs owned by the State for terms of years which have not yet expired.

"This Company bottles at Vichy and sells in France and in other countries the waters of which it is the lessee, under labels which are its property and of which the characteristic marks consists in the name Vichy and the name of the particular spring, and a wood-cut vignette showing the "Thermal Establishment." In 1853, it began to export its water to this country and in 1893, its shipments to this country were about 300,000 bottles. In 1896, its entire shipments amounted to nearly 10,000,000 bottles. The natural waters are exported in their original condition and are not artificially charged with gas.

The township of Saratoga Springs has long been known as abundant in mineral springs, the waters of which are distinguished by different names, and in March, 1872, the geyser or spouting spring of the defendant was discovered in that town. The water is alkaline, is regarded by medical men as a valuable mineral water and has been recommended extensively by the defendant as having a wonderful similarity to the Vichy waters of France. The water was bottled and sold in 1873 and thereafter until 1876 by the owners of the spring, when the defendant, under the name of the Saratoga Vichy Spring Company became the owner and has since sold the water extensively under the name of Saratoga Vichy Water, or Natural Saratoga Vichy Water. The bottles, circular and ad-

vertisements have invariably used the words Saratoga Vichy. The water is highly charged with natural carbonic-acid gas and is bottled under a high pressure of that gas. The water of the complainants is a still water. It was stipulated that the testimony in the Schultz case could be used in this case by either party and from that testimony it appears that the manufacture of artificial sparkling water compounded after the analysis of Vichy water has been extensively carried on in this country since 1862 under representations of its artificial character, that it was understood by intelligent purchasers to be artificial and, as one was a sparkling and the other a still water, there was no confusion in the public mind as to the identity of the two articles and the manufactured Vichy became an article distinct from the still water of the natural spring.

The bottles and lables of the complainants and the defendants have been very unlike each other in general appearance and character and one could not be mistaken for the other by any person who had an acquaintance with either. Until 1896, the words Saratoga and Vichy upon the labels were substantially in the same style and size of type and the name Saratoga was as prominently displayed as the name Vichy. In 1896, a neck-label of white paper, printed in black and red letters, was added by the defendant to its other labels. The word Vichy is very prominently displayed, and the Saratoga over it is in far less conspicuous type, so that if the bottle stands upon a table or a shelf the word Vichy is the one which is the marked and prominent object in sight.

Like the manufactured water, the Saratoga water is understood by consumers to be sparkling, and to have, in that respect, a character distinct from the still, natural Vichy.

It does not appear that the complainants expressed dissatisfaction with the acts of the defendant until the time of the commencement of this suit.

So long as the defendant confined itself rigidly to the universally conspicuous declaration upon its labels and bottles and in its advertisements that the contents of the bottles were Saratoga Vichy Water, it did not violate the rights of the complainants, because Saratoga Vichy and the Vichy of France are well understood to be different articles, in that one is a sparkling and the other is a still water. They are used differently, and, when used, no person could mistake one for the other. In this respect, both the natural water of Saratoga and the manufactured water of Schultz resemble each other, and, accordingly, our decision in the Schultz case intimated very strongly that, after the alteration by Schultz of his labels, subsequent to the commencement of the suit, so as to assert that his article was artificial Vichy, manufactured by himself, he was not open to the charge of unfair competition. Until 1896 the defendant's bottles uniformly and without disguise declared that the contents were Saratoga Vichy Water, and thus proclaimed the difference between the two well-known articles; but, in the label of 1896, the defendant unfairly disregarded the previously acquired right of the complainants to the use of the word when applied to the product of their wells. The effect of the label is to represent to the purchaser not accustomed to the article that it is Vichy water and "Vichy" properly signifies water from the French wells. It is, in fact, an untruthful label employed for an objectionable purpose. It is true that a mere geographical name, without attending facts, which have caused the name to become significant of a particular manufacture and to identify the manufacture as the product of a particular person, is not the subject of a trade-mark. The distinction, however, between mere names of a locality and the secondary signification of names which identify an article with its manufacturer or producer, or which tell the public that an article so produced is of singular excellence, with the result that the use of the name

by a non-resident producer is unfair to the competitor and fraudulent to the public, has been long recognized (Elgin Watch Co. vs. Illinois Watch Co., 179 U. S., 665). The decision in Canal Co. vs. Clark, 13 Wall., 311, referred only to a denial of the exclusive right of a resident of a district of the country to the application of its name to a well-known article of commerce, in that instance coal, so "as to prevent others inhabiting the district or dealing in similar articles coming from the district from truthfully using the same designation." The decisions are abundant that, where the name of a district of country has been used by an inhabitant of that district to identify his product, and has become significant of the success and a declaration of the superiority of the product, a non-resident manufacturer cannot properly use the name to deceive the public and fraudulently obtain the good-will which belongs to his competitor. Thus a watchmaker of some other town than Waltham cannot properly call the articles which he produces "Waltham Watches." The opinion in Pillsbury-Washburn Flour Mills Co. vs. Eagle, 86 Fed. Rep., 608, which exhaustively collates the authorities upon the subject, among which Thompson vs. Montgomery, 41 Ch. Div., 35, and Wotherspoon vs. Currie, L. R., 5 H. L., 508, are important, states as the result of the decisions the distinction which has been referred to as follows :

"The distinction, both in the English and American cases, is between those where a geographical name has been adopted and claimed as a trade-mark proper and those where, as in the case at bar, it has been adopted, first, as merely indicating the place of manufacture, and afterwards, in course of time, has become a well-known sign and synonym for superior excellence. In the latter cases, persons residing at other places will not be permitted to use the geographical name so adopted as a brand or label for similar goods for the mere purpose by fraud and false representation of appropriating the good-will and

business which long-continued industry and skill and a generous use of capital has rightfully built up."

The label of 1896 comes within the spirit of this prohibition, for it untruthfully tends to mislead the unwary purchaser and to gain the reputation which the Vichy natural springs have acquired.

The defendant should be enjoined against the use of this neck label or of any other label in which the place of the origin of its water is not as plainly and prominently made known as the fact that it is named Vichy.

Let the decree of the Circuit Court be reversed, with costs of this court, and the case be remanded to the Circuit Court, with instructions to enter a decree in accordance with the principles herein expressed, and for an accounting of damages from the use of neck label of 1896, with costs of the Circuit Court.

CHARLES BULKLEY HUBBELL and ARCHIBALD COX, for the complainants. WALTER P. BUTLER, for the defendant.

Exhibit C.

UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

LA REPUBLIQUE FRANCAISE ET AL.

vs.

SARATOGA VICHY SPRING COMPANY.

WALLACE, Circuit Judge:

I dissent from the opinion of the Court because, as I view the facts, the case does not disclose any attempt on the part of the defendant to represent its mineral water to purchasers as the French Vichy. In its advertisements the defendant has studiously presented its water to the public as a product of its spring at Saratoga, and the labels and dress upon its bottles not only has never borne any similitude to those upon the bottles of the complainants, but have always distinguished it as Saratoga Vichy Water so plainly that misapprehension by purchasers was impossible. The word "Saratoga" is the valuable part of the descriptive name, because the reputed therapeutic virtues of Saratoga waters have rendered them the most popular mineral waters known in the markets where the defendant's water is offered for sale, and no sane man, having the right to sell his mineral water as a Saratoga water, would be tempted to suppress that part of the name or sell it by any name which would denote a different origin. All the Saratoga waters are bottled and sold by descriptive names, such as "Saratoga Congress

Water," "Saratoga Hathorn Water," etc., and the defendant, in naming its water Saratoga Vichy, did so merely to distinguish it from the other Saratoga waters, and selected Vichy as its distinctive name because its alkalinity assimilated it more nearly to the French Vichy. The label which has met with animadversation in the opinion of the Court is one used on the neck of the bottles. It is a fancy label, having a white background, and printed upon it in red and black letters are the words "Saratoga Vichy." The word "Saratoga" is above the word "Vichy," but included between its extended V and Y. It is true that it is in smaller letters, but the letters are an eighth of an inch in height and breadth. Although not so conspicuous as the word "Vichy," it is so prominent that it is almost inconceivable that it would not be observed across a counter. If this were the only label on the bottle, there would be color for the theory that it might mislead casual purchasers; but just below it is another label, covering nearly half the surface of the bottle, upon which is printed, in letters three-fourths of an inch in length and breadth, the words "Saratoga Vichy Water."

The decree which is authorized by the opinion will not be of the slightest practical benefit to the complainants, and will have no effect except to subject the defendant to expense, for I cannot believe that any person ever has been misled, or ever can be misled, by the use of the neck label, as the defendant has always used it, in conjunction with the body label.

I agree with the conclusion of the court below that the bill should be dismissed.

FILE COPY. 6088

Supreme Court of the United States.

OCTOBER TERM, 1903.

Office Supreme Court U. S.
FILED
OCT 17 1903
JAMES H. McKENNEY,
Clerk.

No. 53.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT THERMAL DE VICHY,
Petitioners,

vs.

THE SARATOGA VICHY SPRING COMPANY,
Respondent.

Brief of Argument on Behalf of Petitioners.

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BRIEF OF ARGUMENT ON BEHALF OF PETITIONERS.

This is a suit in equity brought to restrain the use of the word "Vichy" to describe or as the name or part of the name of a water not drawn from the Vichy Springs.

The suit was instituted in the United States Circuit Court for the Northern District of New York. That Court dismissed the bill. On appeal the Court of Appeals for the Second Circuit reversed the decision of the Circuit Court and granted an injunction, but limited the relief to restraining the respondent from using the word "Vichy" in connection with a water

not drawn from the Vichy Springs unless accompanied by the word "Saratoga" "as plainly and prominently displayed." The petitioners (the complainants below) thereupon applied to this Court for a writ of *certiorari* to review the proceedings in the Circuit Court of Appeals which was granted and the case is now before the Court under that writ.

The complainants in the case are La Republique Francaise (for convenience referred to hereinafter as the Republic of France, or France) and La Compagnie Fermiere De L'Etablissement Thermal De Vichy (referred to hereinafter as The Vichy Company), owner and lessee respectively of the Vichy Springs.

The bill sets forth that the complainant La Republique Francaise is an independent State, and one of the sovereign powers of the earth; that the other complainant, the Vichy Company, is a corporation existing under the laws of France; and that the defendant is a corporation existing under the laws of the State of New York, and a citizen of said State.

It is recited that there is in France a certain commune or town by the name of Vichy which has been known throughout the civilized world for ages and as being renowned for the waters obtained from the numerous mineral springs situated therein which have been universally called and known as "Vichy" waters.

It is set forth that the complainants are owner and lessee respectively of the Vichy springs, and the facts which support the allegations of ownership and possession of the springs are recited in detail.

It is alleged that the complainants are entitled to the exclusive use and enjoyment of the springs referred to, including the right to use the name "Vichy" in

connection therewith, and are equitably entitled to be protected against any and every use of the designation "Vichy" to describe, or as a name of a water not drawn from their springs.

It is charged that the defendant, The Saratoga Vichy Spring Company, is now and for some time past has been fraudulently and unlawfully making use of the complainant's said designation "Vichy" as a name or designation for a certain water or waters by it, the defendant, taken or drawn from a certain natural spring at or near Saratoga, New York.

Copies of the labels used by the defendant are produced with the bill, and the charge is made that the labels are specifically misleading and fraudulent.

Complainants' prayer is in substance that there should be a decree that the use by The Saratoga Vichy Spring Company of the word "Vichy" as a name or designation for the waters drawn from the said spring at Saratoga is a violation of complainants' rights and that the defendant be restrained from using the word "Vichy" as the name or as part of the name or to denote a water not drawn from the springs of the complainants, and that whatever may be true as to the respondent's rights to use the word "Vichy" the use of the labels produced with the bill should be enjoined.

The answer denies all the allegations of the bill relating to the corporate character of the complainant, The Vichy Company, and the exclusive possession and ownership of the Vichy Springs. It alleges that the complainants have no exclusive right, even in France, to the use of the designation "Vichy" in connection with water, that the name "Vichy" has been *publici juris* in the United States for many years, and that

defendant's use of the word "Vichy" has been in every way fair and legitimate.

The record consists to a large extent of stipulations of counsel setting forth the material facts. The record in the case of these complainants against one Schultz is made a part of the present record, the object being to give complainants the benefit of the proof of title contained in that record and the defendant the benefit of the proof of adverse use of the word "Vichy" and other things.

We understand that all the material allegations of our bill as to the history of the Vichy Springs, the ownership of the French Republic, the lesseeship of the Vichy Company and other facts which tend to establish our right to sue are not disputed; and there is as little doubt that the acts of the defendant of which we complain are not sought to be denied.

The material facts may be summarized as follows:

The commune or town named Vichy has been known throughout the civilized world for a long time as being renowned for the waters obtained from numerous mineral springs situated in said commune, the waters of which springs have been for many years universally called and known as "Vichy" waters. Since the treason of the Constable of Bourbon in the year 1531 these springs have been owned by the State of France which, under the law of France, is entitled to the exclusive use and enjoyment of the springs referred to, including the right to use the name "Vichy" in connection therewith.

The Vichy Company is the sole lessee of said

springs for a term of years, paying the sum of one hundred thousand francs for the privilege of occupancy, by whom the waters of the springs have been for many years bottled and sold over all the civilized world.

The exportation of the waters was commenced before 1716. In 1853 the waters were exported directly to this country, and in 1893 the shipments to this country were about three hundred thousand bottles. In 1896 the entire shipments of Vichy amounted to nearly ten million bottles.

In 1872 a spring was discovered in the township of Saratoga Springs, in the State of New York, the water of which differs from the water of the Vichy Springs in ingredients and taste. This Saratoga water was bottled and sold in 1873, and thereafter until 1876, by the owners of the spring, when the defendant, under the name of the Saratoga Vichy Spring Company, became the owner and has since sold the water, using various bottles, circulars, and, since the year 1885, labels of various kinds, hereinafter described more in detail.

Until 1896 the words " Saratoga " and " Vichy " upon the labels were substantially in the same size and style of type. In 1896 a neck label was adopted upon which the word " Vichy " was displayed very prominently and the word " Saratoga " in far less conspicuous type, and similar uses of the two words were then made in circulars and otherwise.

There have been other uses of the word " Vichy " in the United States (which were considered by the Courts below) in connection with manufactured waters, but the defendant alone has made use of the word in connection with a natural water. The uses of the

word " Vichy " by others may be summarized as follows :

Factitious waters have been put upon the market in the United States under the name of " Vichy " since 1862. These waters have differed widely from each other in composition and therapeutic effect, some approaching in some degree the composition of the genuine " Vichy," others being no more than ordinary water, with a slight trace of chloride of sodium. Upon these waters the word " Vichy " has been used recklessly and adventurously, and without any certain or definite meaning, and the word " Vichy," except as indicating that the water sold under it is drawn from the French wells, has meant nothing.

The word " Vichy," notwithstanding the use, hit or miss, to describe these factitious waters, has never lost its original and true meaning, but to-day, as always, in the words of the Circuit Court of Appeals, " Vichy properly signifies water from the French wells."

As a matter of fact neither the French Republic nor the Vichy Company had actual knowledge of any use of the word " Vichy " in this country until shortly before action was taken in 1892 to correct the wrong. It is perfectly obvious that they might, by inquiries in the United States, have ascertained that various persons were selling waters under the name of " Vichy," but as a matter of fact the complainants were ignorant of the use of the word.

We digress to point out in this connection that not only was there no actual acquiescence but it is impossible to find in the case any circumstances which can be construed as imposing on the complainants the duty to send to the United States or instruct those to whom their goods were consigned to make investigations with

a view to discovering opportunities to institute suits. If, however, it was the complainants' duty to inform themselves as to what was being done in the United States and there was a constructive acquiescence covering a considerable period, it is certainly not a reasonable assumption that this period was as long as the dates (1862 to 1892) suggest. For years the business of selling the imitation waters must have been of inconsiderable proportions, and at the time the adverse use of the word " Vichy " commenced the demand for mineral waters in the United States was of ltttle importance, and the commercial relations existing between the United States and France were quite different from what they were at a later date. We think it is impossible to fix a date from which the imputation of laches can be made to run, and if there is any doubt, that doubt should not be resolved in favor of the defendant.

As soon as the complainants received actual knowledge in the premises, in January, 1892, suit was commenced against one Schultz, by far the most conspicuous example of the limited class who had bottled their factitious waters and represented them to be " Vichy " and sold them as such. Until the suit was commenced against Schultz his water had been unblushingly labelled and represented to be " Vichy (Grande Grille)," —" Grande Grille " being the name of one of the Vichy Springs—and nothing else. After the suit was commenced Schultz changed his label first by substituting for the designation " Grande Grille " the words " Manufactured by " in very inconspicuous type, and finally by adding the word " Artificial " in type of the same size as that in which " Vichy " was printed.

Schultz died before the hearing of said suit, and the case was continued against his executrix and was not finally disposed of until after the complainants instituted this suit against this defendant. The death of Schultz, *pendente lite*, precluded any determination of the complainants' rights in said suit against Schultz except in so far as the right to recover profits was concerned. The opinions of the Circuit Court and the Circuit Court of Appeals in said suit against Schultz are reported in 94 Fed. Rep., 500, and 102 Fed. Rep., 153.

There have been introduced into the record other uses of the word "Vichy" which are not referred to by the courts below and which are, we conceive, of no possible consequence. These uses have consisted of (**1**) the use of the word in the Struve establishments, which concern things of which the complainants never heard done or contemplated by Struve many years ago in Russia, or Germany, or other foreign jurisdictions where the complainants were without remedy and where the laws are very different from the enlightened rules of this Court by which, we understand, the case is governed, and (**2**) the haphazard use of the word by retail druggists, who draw their uncertain waters from soda fountains and the like, which use has been different in kind from the use of the word by the complainants and the defendant, and does not in any way affect the sale of the complainants' "Vichy" in the markets of the United States.

In the Court of first instance his Honor, Judge COXE, held that the case was controlled by a decision of his Honor, Judge WALLACE, in the suit brought by these complainants against Schultz, which proceeded on the ground that by reason of laches the complainants were without remedy, and dismissed the bill.

Upon appeal, the Circuit Court of Appeals held that the effect of the neck label displaying the word "Vichy" far more conspicuously than the word "Saratoga" "is to represent to the purchaser not accustomed to the article that is Vichy water, and Vichy properly signifies water from the French wells. It is in fact an untruthful label employed for an objectionable purpose" (Rec., p. 87). But the Court decided that the complainants' relief should be limited to compelling the defendant to print the word "Saratoga" "as plainly and prominently" as the word "Vichy."

Petitioner's Contentions.

We respectfully submit that the Court erred in not restraining the use of the word "Vichy" to describe or as the name or part of the name of water not drawn from the Vichy Springs.

The opinion of the Court of Appeals places the refusal to grant full relief upon the ground that the use of the qualifying word "Saratoga" prevents the confusion of the identify of the two articles because by lapse of time the two waters have come to be understood as distinct (Rec., p. 87).

We respectfully submit that because both waters are named "Vichy" "the short phrase between buyer and seller which indicates the wish to buy and the power to sell" (Congress Co. vs. High Rock Co., 45 N. Y., 291), mistake, confusion and fraudulent substitution are inevitable.

But we most earnestly submit that it may be true that the identity of the two articles is not confused without affecting our right of action. The water of the defendant (paying nothing in duties or for transportation) is sold as "Vichy" and satisfied the demand for "Vichy" (which demand is the good-will and property belonging to the complainants—in effect part of the land they own) and necessarily stands in the way of and precludes the importation and sale of the genuine "Vichy" water in the markets of the United States. If it be admitted, for the sake of the argument, that the identity of the two articles is not confused, it remains true that the use by the defendant of the word "Vichy" enables it to appropriate and satisfy the demand for "Vichy" and makes it impossible for the complainants

to have any trade in the United States, whereby the value of the land owned by the Republic of France is impaired by keeping the product of it out of this market. In effect, the defendant and the class it represents are, by the fraudulent use of the word "Vichy," withholding from the French Republic part of its property. Whether or not the identity of the two articles is also confused is a circumstance of secondary importance.

The only justification for this use of our designation is the plea of laches. We respectfully answer:

1. The Republic of France being the principal complainant, there can be no imputation of laches or acquiescence.

2. None of the evidence of adverse uses of the word "Vichy" (to which objection was seasonably taken) should have been considered, because it tended only to show a custom or usage which. because it was uncertain, unreasonable and grounded in fraud, should not have been considered by a court of equity.

3. If laches can be imputed to the complainants, it should have been regarded as having the effect of a revokable license, which is terminated by affirmative action.

We say that equity will not countenance laches, and that the plea of laches is a good defense to defeat the accounting day after day as long as the laches continues. But we think that it is equally true that equity will not make a title for the trespasser out of fraud, and when the injured party asks that the fraud be terminated his prayer will not be denied. We say that equity may punish him for his forbearance and

disinclination to sue by refusing to give him compensation, but it will not take his property from him and deliver it over to the wrongdoer. We contend that as long as a truthful use of the name can be differentiated from its use in a spurious relation, equity will protect the truth.

In the present instance the record establishes beyond question that whatever the extent of the adverse use of the name, "Vichy" has never lost its original and true meaning, but, as found by the Court of Appeals, "Vichy" to-day as always "properly signifies water from the French Wells." If laches can be imputed to the complainant, we think it was that "inexcusable laches in seeking redress" (96 U. S., 258; 128 U. S., 253; 163 U. S., 202; 179 U. S., 19), which because it has not defeated "the right itself" *(Ib.)*—because it has not destroyed the true meaning of the word—did not defeat the action, except with relation to the period covered by the laches. To yesterday's injury the complainants may have been inattentive. But concerning the injury of to-morrow they are exercising all possible vigilance.

4. And we say that by the treaty with France the protection of our name in the markets of the United States is guaranteed; that we may invoke that protection at any time, and that that right cannot be defeated or displaced by any species of misrepresentation or fraud no matter how long continued.

Before presenting our arguments in support of these contentions, we consider the evidence as to the title of the complainants and the uses of the word "Vichy" by the defendant and others in the United States."

THE FACTS.

The Petitioner's Title.

There is little dispute concerning the material facts. It is abundantly established that the Republic of France is and has long been the owner of the Vichy Springs (Rec., pp. 128, 129; *Ib.*, pp. 153–154; *Ib.*, p. 146, &c.; *Ib.*, p. 154, &c.), and that The Vichy Company, a corporation existing under the laws of France (*Ib.*, p. 141, &c.), is and has long been the sole lessee of said springs (*Ib.*, p. 140, &c., p. 130, &c.) by whom the waters of the springs have been for many years bottled, offered and sold all over the civilized world (*Ib.*, p. 142, &c.).

It is established that for many years, certainly for more than half a century, the complainants and their predecessors have enjoyed in France to all intents and purposes the exclusive right to the use of the designation "Vichy" as the name of a water. The evidence shows that the broad right which the complainants seek to assert in this case has been fully and continuously recognized and upheld by the Courts of France, and that any use of the word "Vichy" in France as a name or designation in connection with water not drawn from the springs of the Vichy basin would be prohibited by injunction (Rec., pp. 131, 137, pp. 141, 147, pp. 158, 151, p. 160, &c., p. 165, &c.).

The evidence of Count De Marafy, recently deceased (Record, ~~300~~ 167, &c.), whose writings have been referred to as of an authoritative character by this Court (163 U. S., 169), is of persuasive force (Rec., p. 166, &c., pp. 167, 168, &c.).

It is true that the French courts have refused to do

more than impose conditions in connection with waters not within the commune of Vichy that emanate "from the same hydrographical region, which may be called generally the Basin of Vichy" (Rec., p. 448).

The facts in this regard are that there are a few small springs on the borders of the commune of Vichy which are not strictly within the lines of the commune, and which are not owned by the French Government or leased to the Vichy Company, and that the word "Vichy" is used under certain restrictions in connection with the waters of these springs (R., pp. 440, 448).

But the water drawn from them is Vichy, because it possesses "identical or analogous qualities of therapeutics" (*Ib.*, 448), and because it is generically the same as all the waters of the Vichy spring or basin.

Nature has planted a single spring or basin with numerous outlets, and the water drawn at each of the outlets is Vichy. We own and control all the important outlets. The fact that other outlets deliver water from the same spring is of no consequence as affecting our rights in the premises.

The Courts have not accepted the reasoning which leads to the conclusion that because the suppression of a lie will benefit more than one person its continuance should be permitted.

Clark Thread Co. vs. Armitage, 45 U. S. Apps., 62, 72.

R. W. Rogers Co. vs. Wm. Rogers Mif. Co., 35 *Ib.*, 847.

Pillsbury, &c., Co. vs. Eagle, 86 Fed., 608, and cases cited.

In a case relating to a product of nature the right of action depends upon the proposition that the word

which is sought to be protected means a particular thing coming from a particular place or source of supply. The complainants' contention is that the defendant is guilty of fraud because he uses the word untruthfully to denote a product coming from some other place or source. It is axiomatically plain that the circumstance that the spring or mine has a number of outlets owned by different persons is immaterial as affecting the meaning of the word and the right to be protected in its use.

And it requires no argument to demonstrate that, in the absence of the affirmative defence relating to the use by the public in the United States of the name of complainants' spring, the case in all its parts would be with the complainants.

We assume that it is not necessary to take up the time of the Court with a discussion of this proposition:

> Congress & Empire Spring Co. vs. High Rock Congress Spring Co., 45 N. Y., 291;
> Radde vs. Norman, L. R., 14 Eq., 348;
> Raggett vs. Findlater, L. R., 17 Eq., 29;
> Apollinaris Co. vs. Norrish, 33 L. T. R. N. S., 242;
> Dunbar vs. Glen, 42 Wisc., 118;
> Anheuser-Busch Brewing Ass'n vs. Piza, 23 Blach., 245; 24 Fed., 149;
> Lever Bros. Limited vs. Pasfield, 88 Fed., 484;
> City of Carlsbad vs. Kutnow, 71 Fed., 167;
> Hill vs. Lockwood, 32 *Ib.*, 389, 395.
> Townsend, J., in opinion on the demurrer (Rec., p. 246 *et seq.*).

In the absence of laches or acquiescence the use by the defendant of the designation "Saratoga Vichy"

would be an obvious infringement of complainants' rights. There would be an invasion of complainants' generic right to the exclusive use of the designation "Vichy" and the employment of the prefix "Saratoga"—like "High Rock" to qualify "Congress," (45 N. Y., 291) "London" to qualify "Appolinaris" (33 L. T. R., 242) "American" to qualify "Sunlight," (88 Fed., 484), "Kutnow's Improved Effervescing," to qualify "Carlsbad" (71 Fed., 167) and so on*—would be held to be an immaterial circumstance which in no way justified the use of complainants' designation.

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*"Royal" and "Royal London," Royal Baking Powder Co. v. Raymond, 70 Fed., 376 (On appeal, 85 Fed., 231); "Glenfield" and "Royal Palace, Glenfield," Wotherspoon v. Currie, 5 H. L., 508; "Budweiser" and "Milwaukee Budweiser," Anheuser-Busch Brewing Association v. Fred Miller Brewing Co., 87 Fed., 864; "Health Food" and "Sanitarium Health Food," Fuller v. Huff, 104 Fed., 141; "Home" and "Home Delight," New Home Sewing Machine Co. v. Bloomingdale, 59 Fed., 284; "Sanitas" and "Condi-Sanitas," Sanitas Co. v. Condy, 56 L. T., N. S., 621 (4 R. P. C., 195); "Portland" and "Famous Portland," Van Horn v. Coogan, 52 N. J. Eq., 380 (28 Atl. Rep., 788); "Roy Watch Case Co." and "Camm-Roy Watch Case Co.," Roy Watch Case Co. v. Camm-Roy Watch Case Co., 59 N. Y. Supplement, 979; "Star" and "Lone Star," Hutchinson v. Covert, 51 Fed., 832; "Cashmere" and "Violets of Cashmere," Colgate v. Adams, 88 Fed., 899; "Hohner" and "Improved Hohner," Hohner v. Gratz, 52 Fed., 871; "Queen Quality" and "Queen," Thomas G. Plant Co. v. May Co., 105 Fed., 375; "Pride" and "Pride of Syracuse," Hier v. Abrahams, 82 N. Y., 519; "German Household

The conduct of the defendant has been at all times fraudulent. When the spring was discovered it was called "Ætna" (Rec., p. 46). Soon after the discovery the name of the spring was changed to "Saratoga Vichy Spouting Spring, Saratoga, New York."

The appropriation by the defendant of the word "Vichy" was "without a shadow of justification and in fraud of plaintiff's rights" (179 U. S., 19, 37). The water of the defendant's spring may be unmistakably palatable and wholesome and useful for all the purposes for which it is recommended, but it is in no conceivable sense "Vichy."

We quote from a book put out by Schultz and for many years used in connection with his business:

> "Some Saratoga waters are named after famous European springs—for instance, *Saratoga Vichy.* Most people are misled by the name, believing the water to be similar in composition and effects to *Vichy*, which is the great *alkaline* water, *carbonate of soda being its predominant ingredient.*
>
> "Here is a comparative analysis of both waters,

Dyes" and "Excellent German Household Dyes," Oppermann v. Waterman, 94 Wis., 583 (69 N. W. Rep., 569); "Guinea Coal Co." and "Pall Mall Guinea Coal Co.," Lee v. Haley, L. R., 5 Ch., 155; "Le Page's Liquid Glue" and "Le Page's Improved Liquid Glue," Russia Cement Co. v. Le Page, 147 Mass., 206; "The American Grocer" and "The Grocer," American Grocers' Pub. Co. v. Grocers' Pub. Co., 25 Hun, N. Y., 398; *Accord.*

showing their three principal ingredients in 100,000 parts :

	Vichy (Grande Grille).	Saratoga Vichy.
Carbonate of Soda	380.130	89.660
Chloride of Sodium	57.878	220.660
Carbonate of Lime.....	25.003	101.124

" It will be seen at a glance that chloride of sodium is the predominant ingredient in Saratoga Vichy—*just as in all other Saratoga waters*—that carbonate of lime comes next, and that carbonate of soda is the smallest. With the three principal ingredients *differing about 400 per centum each* from real Vichy the use of that name does not appear to be justified " (Rec., p. 226).

This statement is supported by other evidence contained in the record. As found by the learned Judge in the Court of first instance, " The two are different in appearance, taste and ingredients " (Opinion of Coxe, J.), and yet the defendant says, repeatedly and continuously, that the use of the name " Vichy " in connection with its springs is justified in part by the fact that the water is substantially like the springs of the complainants.

In every possible aspect the use by the defendant of the designation " Vichy " is arbitrary, misleading and inequitable.

We submit that it is impossible to doubt that the word " Vichy " was selected by the defendant to pro-

mote and enable the sale of the water of its spring upon the reputation of the famous Springs of Vichy.

And the circulars used continuously from the first by the defendant to market its water amount to a demonstration that the appropriation of the word was for the purpose of trading upon the reputation of the complainants' springs.

The defendant has from the first recommended its product as being, for example, "superior to the French Vichy" (Rec., p. 59), "just as good" (*Ib.*, p. 37), and because of its "wonderful similarity to the Vichy waters of France" (Rec., p. 53).

It may be said of these advertisements, as was recently said of similar advertisements by the English Court of Appeal:

> "Of course, it would never do, it would not suit them at all, to advertise goods in a way which would have the direct result of sending people to their rivals. The object is to make it clear who the advertisers are by giving a sufficient address, and only to hint at the other people who are in the background—to attract to one's self by the suggestion of your competitor" (Valentine vs. Valentine, 17 R. P. C., 673, 685).

See, also,

Croft vs. Day, 7 Beav., 84.
Menendez vs. Holt, 128 U. S., 514.

The appropriation of the name of the famous springs speaks for itself, and the various ways in which the defendant has used the name "Vichy" and the *indicia* availed of to accompany it remove any doubt concerning the purpose of the appropriation.

The evidence is that the complainants have used one style of bottle for forty-five years, which has continued to be the same (Rec., p. 30).

The defendant had in use a bottle without any labels, which it used for a number of years until 1885, when it adopted another and different bottle with a white label, which it used until about the year 1888.

In 1888, for reasons which are not set forth, the bottle it then had in use and which had been used for years, was discarded and abandoned, and a bottle which was in shape, color, and otherwise, to all intents and purposes, exactly like that of the complainants', was adopted, and at the same time a label in size and general character an obvious imitation of complainants' label was devised and adopted for use in connection with the simulated bottle (Rec., pp. 48–67).

This inequitable bottle and label defendant used until the year 1896, and it is admitted that the water put up in this way was on sale in the City of New York at the time the bill was filed (Rec., p. 49).

And it is shown that, discontinuing the use of the style of circulars it had previously used, the defendant put out and for years employed circulars consisting in part of representations of the simulated bottle and label (Rec., pp. 37–69).

At a little distance, or to a person buying hurriedly, or to an incautious purchaser, the water of the defendant, as it was put up for a number of years prior to 1896, was obviously very similar to the imported water, and obviously similar unnecessarily, and by the choice and selection of the defendant.

Whatever may be true of the word "Vichy," the defendant's article thus dressed admits of no possible justification (Singer Manfg. Co. vs. June Manfg. Co., 163 U. S., 202).

And when after years of experience the defendant made its last choice of labels, it caused to be devised

a label which was applied upon the neck of the bottle so that it was not washed off when the water was put on ice, and was, we think, the principal means of identification which gave a name to the package, and in constructing which pains were taken to apply the word "Saratoga" in comparatively small type so that it was not likely to attract attention, and so that the qualifying word was effectually dominated by and lost in the word "Vichy."

In the words of the Court of Appeals, "It is, in fact, an untruthful label, employed for an objectionable purpose" (Rec., p. 87).

The same over accentuation of the word "Vichy" is to be found in the defendant's advertisements (Rec., p. 41), and as part of the circular issued in connection with the water carrying the last label (Rec., p. 39).

That this use of the word "Vichy" cannot be justified is demonstatred by many authoritative cases (Royal Baking Powder Co. vs. Royal, 122 Fed., 337; American Waltham Watch Co. vs. U. S. Watch Co., 173 Mass., 85; 53 N. E., 141).

And the defendant's acts are peculiarly inequitable by reason of the fact that its water is a natural water and not a manufactured product. In the case of the factitious waters to ask for natural "Vichy" was at once to exclude the artificial product. In the present instance to ask for natural "Vichy" is to exclude the artificial product and to include the product of the defendant. The defendant has continuously on its labels and in its circulars recommended its water in many ways as "a pure natural 'Vichy'" (Rec., p. 53), and in many ways emphasized the caution, "Beware of artificial Vichy" (Rec., pp. 39, 49, 71).

The use of the word "Vichy" by this defendant

cannot be justified upon the theory, if any such theory were possible, that artificial "Vichy" means a water manufactured according to accepted analyses of the water of the complainants' springs. Its water is in no sense "Vichy" and it is sold as natural "Vichy." It cannot bring its acts within the usage of the name "Vichy," if such a usage could be considered, to which most of the evidence on the part of the defendant relates. The defendant's acts are *sui generis*. It has no defense but its own wrong.

Said Lord Justice JAMES:

> "It has been said that one murder makes a villian and millions a hero, but I think it would hardly do to act on that principle in such matters as this, and to say that the extent of a man's piratical invasions of his neighbor's rights is to convert his piracy into a lawful trade. That ground of defense, therefore, in my judgment, fails" (Ford vs. Foster, L. R., 1872, 7 Ch. A., 611, 624).

Obvious fraud continued for a period of years in connection with the abandonment of an honest bottle and the adoption and use of a simulated bottle and label, "ought not, unpon principles of eternal justice, to be admitted to repel relief" (6 Wheat., 481, 497).

The adverse uses of the word "Vichy," however general and long-continued, were all of them essentially unfair and equivocal.

As has been pointed out, the waters of the defendant's spring are widely different from "Vichy" in taste and ingredients. The veteran witness of the defendant in the Schultz case says: "My Vichy is totally different from the imported by its external

appearance and by the intrinsic effect" (Rec., p. 404). The evidence leaves no room for doubt that the word "Vichy" has no definite meaning, except as it indicates the waters of the Vichy Springs. The uses of the word described by defendant's witnesses are baldly loose and inaccurate. Because they show only that there has been a fraudulent and misleading use of the word "Vichy," hit or miss, to describe all sorts of water which has not destroyed the original and true meaning of the word, we think these uses of the word have no bearing upon the questions which the Court is called upon to decide. But in view of the quantity of evidence taken, we present a summary of the adverse uses of the word :

1. It has been used arbitrarily in connection with water drawn from a soda fountain to indicate any alkaline water charged with carbonic acid gas.

This use of the word "Vichy" we think may be laid out of sight. As the word has been used in serving consumers at soda fountains it has signified according to much of defendant's evidence "simply an alkaline water" (Rec., p. 375).

But it will not be contended for a moment that when a a physician, whose prescription has reference to water in bottles or siphons only, recommends the use of Vichy, he means any alkaline water, be what it may be, which contains carbonic acid gas. He means a water in bottles or siphons at least containing the "true components of the genuine springs" (Rec., pp. 268, 320, 339, 341).

The demand for a water to be transported from place to place or used at the table is not supplied by a water which is put up in such a way that it must be dispensed from a soda fountain.

It is certain that the use of the word "Vichy" in connection with a demand for an effervescent water to be consumed as soon as it is drawn is a very different thing from the use of the same word by means of labels and otherwise for water put up and sold in bottles.

And we submit that it is not reasonable to hold that there was imposed upon these complainants the duty to ascertain the things being done in the drug stores of the United States which did not to any extent affect them or interfere with their trade.

In the concrete case at bar it appears that the output of the defendant's springs is offered directly and specifically in bottles in competition with the output of the complainants'. To ask for "Vichy" at a store where the waters are kept is, in the absence of explanation to describe at one and the same time the goods of both parties. They are both labeled "Vichy," each bidding for the same demand and seeking to supply the same wants.

Proof, therefore, that the name "Vichy" has been used for years in drug stores in connection with an effervescent alkaline water which has been drawn from a soda fountain and at once consumed need not be considered in this case.

2. The Struve Establishments were emphasized in the testimony taken by the defendant in the case against Schultz. It appears that Struve began his operations in 1840 and opened numerous establishments where he made use of the names of all the principal springs, as we understand, in connection with waters drawn from fountains (Rec., pp. 413–415),

The evidence deduced is in the form of extracts from publications put out by Struve and others describing what he contemplated and was doing.

From our point of view all the evidence relating to the Struve Establishments is immaterial:

(**a**) It is conclusively established that the complainants have "never known of artificial water manufactured by Dr. Struve" (Rec., pp. 144, 148, 152).

(**b**) With the possible exception of Brighton, England, the proof concerning which is too general and indefinite to be of any value, whatever use there was by Struve or his son of the word "Vichy" took place in Germany, where, we understand, the owners of the Vichy Springs were without remedy. It may be true that the laws of Germany, etc., in effect protected Struve in the manufacture of his "imitated waters" (Browne on Trade Marks, Second Edition, 688, *Ib.*, Sup. 170). But that fact is without significance as affecting the rights of the complainants existing under the laws of the United States. In the absence of proof that there was a right of action against Dr. Struve the evidence of what he did is immaterial on its face, and if there was a right of action against Dr. Struve the omission to proceed did not impair the rights of the complainants to be protected against the operations of the defendant in the United States.

3. The evidence for the respondent which relates to waters sold in bottles or siphons establishes beyond question that the name "Vichy" has for a long time been applied in the United States to waters of many different kinds, but that it has never had a definite meaning except as it has denoted the genuine water drawn from the complainants' springs.

The uses of the name in connection with artificial waters sold in the United States are accurately summarized in the report of the principal expert witness

called in the Schultz case Dr. Endemann made shortly before the bill of complaint in that case was filed (Rec., p. 209), which is supported directly or indirectly by perhaps all the evidence offered on behalf of the defendant. This summary of the uses of the name "Vichy" together with explanatory matter which appeared in the "New York Tribune," in which the report was printed is for the convenience of the Court here reproduced :

"NATURAL AND ARTIFICIAL VICHY."

"The action of the Board of Health in regard to the use of impure waters from city wells the manufacture of mineral waters, as recently reported in 'The Tribune,' has started inquiries as to the quality of the medicinal spring waters such as Seltzer and Vichy, sold by manufacturers, in this city. In order to test the question, Vichy waters were purchased from twelve different manufacturers and submitted for analysis to a chemist of high standing, who reported as follows :

"GEORGE FRED HAYNES, ESQ. :

"DEAR SIR: I have examined the samples of Vichy left at my laboratory for analysis. Vichy is a medicinal alkaline water and is composed of fifteen different mineral ingredients, the sum total of which is about 100 times greater than that of Croton Water. It is, therefore, of the utmost importance that in artificial Vichy the different ingredients should be present in correct proportions, as its efficacy and value depend upon it. A margin of 10 per cent. either way in artificial Vichy as compared with natural Vichy should certainly be more than ample for a medicinal preparation. The results are given in the following table :

Analysis of Natural and Artificial Vichy Compared.	Carbonnate of Soda.	Chloride of Sodium	Total Solids.
Natural Vichy according to Bauer	380.1	57.8	506.5
1. Carl H. Schultz	380.2	57.6	508.2
2. Dr. Hanbury Smith	262.3	59.3	386.0
3. John Morgan	226.5	103.5	370.0
4. S. A. Ludin	190.8	61.0	227.5
5. Byrne Brothers	148.4	44.2	193.5
6. Hygeia Distilled W. C.	112.6	126.9	264.2
7. J. F. Meyer	74.2	213.7	343.0
8. Lighte & Bro.	66.2	73.5	141.0
9. Weymann Bros.	53.0	201.2	430.5
10. Rayner & Steele	66.2	137.0	224.0
11. Bolen & Byrne	53.0	3.3	66.0
12. Edward H. Walker	none	trace	8.5

"From this table it will be seen that but one water, No. 1 (Carl H. Schultz) agrees well with the natural Vichy.

"Respectfully yours,

DR. H. ENDEMANN.

NEW YORK, March, 28, 1889.

"This report will surprise the public, as it discloses the fact that only one water is manufactured in this city which closely appraches in composition the natural Vichy, while all of them are sold as Vichy, even in drug stores upon the prescription of physicians. Considering the large quantity of these waters used by the public, it is to be hoped that the medical profession will take the matter in hand and have the manufacture of mineral waters placed under official control (Rec., p. 209)."

This report is supported, directly or indirectly, by perhaps all the evidence offered on behalf of defendant. The proof is that the word "Vichy" has been

used, hit or miss, on waters differing widely from each other in composition and therapeutic effect.

The use most fully explored is that of Schultz, and to it we briefly direct attention.

The use of the name "Vichy" by Schultz was at all times fraudulent and has never ceased to be fraudulent.

Whether or not he sat down and said to himself "I propose to defraud my neighbor" (8 R. P. C., 181, 184) is not material. He acted with the fullest knowledge and deliberately did that which was necessarily calculated to injure the complainants, and "he must be taken to be guilty of fraud—that is to say, of knowingly injuring his neighbor—knowingly violating his neighbor's rights by some false pretense" (Pinto vs. Badman, 8 R. P. C., 181).

And we digress to say that it is not essential to our case to show that this defendant is animated by a vicious moral purpose "partly because a man is presumed to intend the natural consequence of his own act and partly because although he may have acted in ignorance in the first instance yet if he continues that course of conduct after he has got knowledge of the facts he then becomes guilty of fraud" (Chivers vs. Chivers, 17 R. P. C., 420, 430).

Whatever may be true of the necessity to show an immoral purpose in order to obtain compensation for past injury—a question which has given rise to some discussion (16 Harvard Law Review, p. 272)—there is no room for difference of opinion concerning the rule thus recently stated in the House of Lords:

> "When the facts are brought to his attention and when the facts are established in a Court of

justice for him to continue to do that which perhaps he was previously doing unintentionally or unconsciously before the matter was brought to his attention constitutes and is a fraud" (Edge vs. Gallon, 17 R. P. C., 557).

See, also,

Saxlehner vs. Siegel Cooper, 179 U. S., 42, and cases cited;

Reddaway vs. Banhan, A. C., 1896, 200, and cases cited;

North Cheshire, &c., Co. vs. Manchester, &c., Co., A. C. 1899, 83.

If for the sake of the argument it be admitted that Schultz when he appropriated the name of the famous springs was chiefly concerned with promoting the welfare of his patrons, the fact remains that he deliberately acted in a way which was to the detriment of his neighbor and in a manner that was in law unjustifiable. He in effect appropriated the property of the French Republic and the Court would have restrained him and restored that property however inadvertently or innocently he might have done it (See North Cheshire, etc., Co. vs. Manchester, etc., *supra.)* In contemplation of law his acts have been at all times fraudulent.

The controlling fact in connection with Schultz's use of the word is that until after suit was commenced against him his labels in no way disclosed, no matter how attentively examined, that his water was not drawn from the Vichy Springs.

His labels did not disclose or seek in any way to disclose that the water was not the natural water or that it was made or compounded by Schultz, and he not only represented his factitious water to be "Vichy," but he added to the injury by stating that it was "Grande Grille."

We submit that there could not be a better example of a technical trade-name than the word "Grande Grille." It is in a perfectly accurate, legal sense a technical trade-mark. It has a fixed, invariable definite and specific meaning denoting the origin and the property of the complainants to the exclusive use of which they are entitled.

The designation "Vichy Grande Grille" is analogous in its nature to such words as "Appollinaris," 33 L. T. N. S., 242; "Congress," 45 N. Y., 291; "Bethesda," 42 Wisc., 118, which have been held to be the property of the persons using them.

In Putnam Nail Co. vs. Bennett, 43 Fed., 800, Mr. Justice BRADLEY said:

> "Now a trade-mark clearly such, is in itself evidence, when wrongfully used by a third party, of an illegal act. It is of itself evidence that the party intended to defraud and to palm off his goods as another's.

This language is quoted with approval by this Court in Lawence Manfg. Co. v. Tennessee Manfg. Co., 138 U. S., 537, and is approved directly or indirectly in many other authoritative cases (Elgin Watch Co. vs. Illinois Watch Co., 179 U. S. 665; Reddaway vs. Banham, A. C. 1896, 199-210; Brown vs. Meyer, 139 U. S., 549).

The use by Schultz of the designation "Vichy Grande Grille" was in principle in every way the same as if the name of the French Republic or the Vichy Company had been used. It was we submit "a palpable and unmitigated fraud which admits of no possible justification."

Schultz's first label which was devised when he began the business prior to the year 1865 (Rec., p.

438), and was not changed until after suit against him was instituted (Rec., p. 116) was as follows :

Carl Schultz's Vichy. (GRANDE GRILLE.)	BAUER PARTS IN 100:000		
Potassium Sulphate,	20,404	Ammonium Carbonate,	0,469
Sodium Sulphate,	11,771	Calcium Carbonate,	25,003
Sodium Phosphate,	0,422	Strontium Carbonate,	0,232
Sodium Chloride,	57,878	Magnesium Carbonate,	3,529
Sodium Bromide,	0,013	Iron and Manganese,	traces
Sodium Iodide,	0,003	Alumina,	0,078
Sodium Carbonate,	380,130	Silicic Acid,	6,406

After suit was instituted he changed his labels by adding the following :

Carl H. Schultz's Vichy.	COMPOUNDED AFTER BAUER'S ANALYSIS		
Pottassium Sulphate,	20.404	Ammonium Carbonate,	0.469
Sodium Sulphate,	11.171	Calcium Carbonate,	25.003
Sodium Phosphate,	0.422	Strontium Carbonate,	0.232
Sodium Chloride,	57.878	Magnesium Carbonate,	3.529
Sodium Bromide,	0.013	Iron and Manganese,	traces
Sodium Iodide,	0.003	Alumina,	0.078
Sodium Carbonate,	380.130	Silicic Acid,	6.406

Thus in his new label the words " Manufactured By " are set in very small type being used in lieu of the name " Grande Grille " which in the first label was in comparatively conspicuous type.

Why did he insist upon having " Manufactured By " in type so small that it would not be likely to be observed ?

At the time the " Grande Grille " label was abandoned the defendant's solicitors wrote as follows :

> " In fact Mr. Schultz has already changed his labels to this form, and he would also be willing,

> if your clients should desire this, to print the word 'Artifical' in the left-hand corner of the upper label in type corresponding to the words 'Manufactured By' on the right-hand side."

Why did they insist upon having the word "Artificial" in type so small that no one could be likely to see it?

It is indisputably true that after their attention had been called to the matter they desired to use labels which concealed the fact that their water was "Manufactured By" or that it was "Artificial."

And we submit that it is an irresistible conclusion from their acts and suggestions that the "Grande Grille" label which they had used for years did not make the semblance of an attempt "clearly and unmistakably" (163 U. S. 204) to disclose that the water was an artificial product.

If it is suggested that the name "Carl H. Schultz" formed a conspicuous part of the label which was used until suit was instituted, we answer in the language of Croft vs. Day, 7 Beav., 84, a leading case which has been constantly cited with approval for more than half a century:

> "To have a copy of the thing would not do for though it might mislead the public in one respect it would lead them back to the place where they were to get the genuine article, an imitation of which is improperly sought to be sold. For the accomplishment of such a fraud it is necessary in the first instance to mislead the public, and in the next place to secure a benefit to the party practising the deception by preserving his own individuality."

And this Court has said:

> "It is no answer * * * to say that there was no invasion of that right because the name of S. O. Ryder accompanied the brand upon the flour sold by the appellants instead of the name of Holt & Co. That is an aggravation and not a justification" (Menendez vs. Holt, 128 U. S., 521).

Say the Court of Appeals for the Eight Circuit:

> "The only effect of placing their unfamiliar names and residences upon the packages * * * under the names of the appellee's well-known articles was to give the appellants the benefit of established reputation of the appellees' articles, and thus to enable them to derive greater benefit from their fraud" (Shaver vs. Heller & Merz Co., 108 Fed., 821–833).

Schultz began the use of the name "Vichy" for the purpose of taking advantage of the reputation of the complainants' springs. Until after suit was instituted against him he offered and sold his product as "Vichy Grande Grille," thus making use of a name used only in connection with the complainants' springs and never as a descriptive term. He began by saying of his product, "This is the water of the Grande Grille Spring, and it is Vichy." He continued to make that statement until after suit was brought against him. His thirty years' use of his label was thirty years of fraud.

Taking the narrowest possible view of the complainants' rights, the business carried on by Schultz until after suit was instituted by means of his first label was a fraudulent business based upon the use of fraudulent labels, in connection with which he acquired no rights of any description.

All these uses of the word "Vichy" are accurately described in the testimony of defendant's witness Casebeer, whose experience antedates the introduction of the Schultz Waters (Rec., p. 372).

> "85 x-Q. Don't you believe that these manufacturers of this artificial carbonated water in adopting the term 'Vichy' intended to imitate something?
>
> "A. They intended to imitate the Vichy Spring.
>
> "86 x-Q. And by using the name 'Vichy' they intended to borrow the reputation of the 'Vichy Water,' did they not?
>
> "A. Certainly" (Rec., p. 379).

In 1862, when Schultz began the sale of his water, his use of the word "Vichy" was fraudulent, and would have been restrained without hesitation by this Court.

His business had its origin in fraud, was inaugurated and carried on by the use of labels which never ceased to be fraudulent.

The other uses upon factitious waters have been comparatively of slight importance. If the use by Schultz is insufficient to support the defendant's argument, the other instances fall of their own weight.

The original and true meaning of the word "Vichy" has never been destroyed.

Under the common law, if the defendant had established that the original meaning of the word "Vichy" in the United States had been destroyed, while there would be no justification of the labels enjoined by the Court below there might be a justification of the use of the designation "Saratoga Vichy."

But proof that a word has been incorrectly or arbi-

tearily used is not proof that its true meaning has been destroyed.

In the present instance it is demonstrated to a certainty that the true meaning of the word "Vichy" in the United States has always been recognized and that it has not by an inaccurate and irresponsible use been destroyed or even materially impaired. The evidence as to the true meaning of the word "Vichy" in the United States and that it means to-day what it meant before any of the factitious or compound waters or the water of the defendant came into the market is contained abundantly in the record of the case against Schultz.

The use by Schultz is by far the most important instance of adverse use which is produced. For years Schultz referred in his book to "real Vichy" (Rec., p. 199).

Upon all his labels he displayed an analysis of one of the complainant's springs.

It may be remarked in passing that the analysis of all the springs are substantially the same, the differences between them being of inconsiderable importance (Rec., pp. 203, 134, 144, 401).

This is saying as formally and pointedly as possible that the word "Vichy" means a water containing the ingredients of "Vichy." And it is saying that no water is "Vichy" which does not contain those ingredients.

In an advertisement published by Schulz in 1891, he refers to his "Vichy" and "Vichy with Lithia," and says they were "analyzed by the principal professor of chemistry in 1862, and endorsed as * * * of *correct composition*, prescribed by the medical profession, used by over three hundred physicians and their

families," and that they are "the only * * * *correct* mineral waters sold in New York City to-day." (Rec., p. 233).

In the publication which Schultz put out and copyrighted in 1891, and which is offered in evidence in the Schultz case as "Defendant's Exhibit No. 39," and also as "Complainant's Exhibit, Schultz Publication" (Rec., p. 210), thousands of copies of which he circulated continuously (Rec., p. 353), he says: "Vichy * * * is the great alkaline water, carbonate of soda being its predominant ingredient." Then he refers to "Vichy Grande Grille," and gives the principal ingredients of the spring, and then he says that "Saratoga Vichy," so-called, differs "from real Vichy," and repeats in substance that "most people are misled by the name" (Rec., p. 226).

The defendant, on the other hand, has for years been asserting exactly the contrary. Schultz says in substance that the defendant's water is not "Vichy," because it does not contain the true components of the Vichy Springs. The defendant insists that the artificial waters are to be avoided, because "no natural mineral water can be exactly reproduced artificially except by accident," and since the beginning has continuously asserted that its water "takes special rank at once * * * from its wonderful similarity to the Vichy waters of France." This statement, with the exception of the word "wonderful," which was omitted about the year 1880, has been repeated in all the circulars put out by the defendant, and with it have been used the following, among other similar statements:

> "Do not fail to ask for the Saratoga Vichy, as all other Vichy drawn from mineral fountains and in many cases the bottled Vichy is a manu-

factured water in imitation of the French Vichy, and should not be confounded with the Saratoga Vichy, which is a pure natural Vichy" (Rec., p. 53).

"The Saratoga Vichy is an excellent table water and superior to the French Vichy, as it contains more natural carbonic acid gas" (Rec., p. 53).

For years they used on their label (Rec., pp. 13, 33), to supplement the word "Natural," the following statements:

"A medicinal beverage bottled with the natural gas of the spring only."

"I cannot condemn in too strong terms the use of artificial mineral waters. They never replace those of the natural spring."

"No natural mineral water can be exactly reproduced artificially except by accident" (Rec., p. 33).

On their last circulars they have repeated in prominent type the caution which they have used continuously and in many ways from the first:

"BEWARE OF ARTIFICIAL VICHY" (Rec., pp. 39, 69, 71).

In every way the defendant has offered and sold its product as "Natural" and as "Pure Natural Vichy." The defendant in its circulars has continuously said that its water is "just as good as the imported Vichy" (Rec., p. 37), "superior to the French Vichy" (*Ib.*, pp. 53, 59, 61, 69, 71), of "equal merit with the celebrated French Vichy" (*Ib.*, p. 83), "its similarity to the Vichy waters of France" (*Ib.*, pp. 59, 61, 69, 71, 75, 99).

The price-lists of Schieffelin & Co. of New

York, and Wyeth & Bro. of Philadelphia, leading houses in the trade, published one in 1889 and the other in 1898, referred to complainants' product as "the genuine Vichy Water" (Rec., p. 238), and the testimony is that "other houses of established reputation" use and have used the expression "genuine Vichy Water" in the same way (*Ib.*, p. 238).

We do not suggest that the original meaning of a word or symbol may not be effectually displaced and destroyed by continued use in a secondary sense. The language is recruited in this way, and in some instances the right of the public began with unmistakable fraud and misrepresentation. "Epsom Salts" (71 Fed., 169), "Hunyadi Water" (179 U. S., 19), are examples of this kind.

But we submit that there is a perfectly safe and infallible test which is clearly illustrated by the case before us.

So long as the word "genuine" has value to differentiate the complainants' article from the defendant's the use of the word or symbol by the defendant in a false relation is misleading and fraudulent. This record shows that to use the expression "Genuine Vichy" is to refer to the waters of the Vichy springs. The inevitable conclusion is that water from any other source is NOT "GENUINE Vichy." In other words, it is SPURIOUS "Vichy." There is fraud and a right of action.

In this case the defendant has not shown that the word "genuine" is without value to point out the complainants' product, and its defense is not good.

It is thus shown that what we conceive to be the true meaning of the word "Vichy" has been preserved

and perpetuated, and that it means a product which is distinctly unique.

We submit that "Vichy" is in every way substantially the same as "Carlsbad" (71 Fed., 168), "Akron" (51 N. Y., 189), "Radstock" (Braham vs. Beachin, 7 Ch. D., 848), "Leopoldshall Kainit" (L. R., 14; Eq., 348), "Jarrahdale Jarrah" (73 L. T. R., 80), "Seixo" (L. R. Ch., 192; 13 Wall., 315), and other words which have denoted a unique product of nature founded only at a particular place, and which have been held to be in the nature of trade-names.

We respectfully suggest, too, that the cases which protect such geographical names as "Waltham" (53 N. E., 141), "Glenfield" (138 U. S., 550; 179 U. S., 683), "Stone" *(Ib.)*, "American" (108 Fed., 821), "Chicago" (83 Fed., 213), "Minneapolis" (86 Fed., 608; 88 Fed., 645), add certainty to the long recognized rule as to names which denote natural products which are unique and found only at particular places.

Unless, therefore, the defense, based upon the complainant's delay, is good, the decision of the Court below should be corrected by granting full relief. We submit that the case is the same as if action had been taken when the first bottle of spurious "Vichy" appeared for four reasons, which we proceed to consider.

THE LAW.

The fact that the French Republic is the principal complainant renders the defense of laches valueless and inapplicable.

Upon the broad ground that the principal complainant is a sovereign power we respectfully contend that the defense of laches should go for nothing, and especially in view of the nature of the acts of the defendant.

The answer alleges that there is a misjoinder of parties plaintiff because "the said plaintiff 'La Republique Francaise' has no interest in the matter alleged in the said bill of complaint" (Rec., p. 113). That the French Government is a necessary party and is materially interested in the subject matter of the suit, the ownership of the springs, and the name appurtenant thereto is plain, we think, without argument, and is demonstrated by many cases.

The case is the same as if the French Government were a patentee and the Vichy Company the exclusive licensee, and in such a case there is no question that the owner of the patent would be an indispensable party.

Waterman vs. Mackensie, 138 U. S., 252.
Birdsell vs. Shaliol, 112 U. S., 485.
Paper Box Cases, 105 U. S., 766.
Otis Bros. Mfg. Co. vs. Crane Rros. Mfg. Co., 27 Fed., 550.
Story's Eq. Pl., § 72; quoted and approved in Gregory vs. Stetson, 133 U. S., 579.
Foster's Fed. Prac., Vol. 1, § 42, p. 110.
Chadbourne's Executors vs. Coe, 10 U. S. App., 78.
Williams vs. Bankhead, 19 Wall., 563.

The case of Kernochan vs. New York Elevated Railway Co., 128 N. Y., 550, relied on by the defendant's counsel in the Court below, related only to the recovery of damages arising from interference with plaintiff's easement by defendant's road. If an injunction had been applied for the owner of the premises would certainly have been a necessary party, and the Court does not intimate the contrary.

In the present instance the purpose of the suit being the protection of the property by injunctive relief, the owner of that property is an indispensable and, perhaps, the only necessary party.

It is certain that if the Government of the United States were a complainant in this case, as the Government of France is a complainant, there could be no imputation of laches.

United States vs. Kirkpatrick, 9 Wheat. 720.
Dox vs. The Postmaster-General, 1 Peter, 318.
United States vs. Knight, 14 Peters, 301.
Gibbons vs. Unifed States, 8 Wall., 269.
Gibbons vs. Chouteau, 13 Wall., 92.
People vs. Gilbert, 18 Johnson's Reports, 229.
Steele vs. United States, 113 U. S., 128.
United States vs. Nashville, &c., D'y Co., 118 U. S., 120.
United States vs. Beebe, 127 U. S., 338.
United States vs. Insley, 130 U. S., 263.
San Pedro, &c., Company vs. United States, 146 U. S., 120.

In the United States vs. Thompson, 98 U. S., p. 486–489, the rule is summarized as follows:

"The rule of *nullum tempus occurit regi* has existed as an element of the English law from a very early period. It is discussed in Bracton, and has come down to the present time. It is not necessary to advert to the qualifications which successive parliaments have applied to it.

"The common law fixed no time as to the bringing of actions. Limitations derive their authority from statutes. The king was held never to be included, unless expressly named. No laches were imputable to him. These exemptions were founded upon cosiderations of public policy. It was deemed important that, while the sovereign was engrossed by the cares and duties of his office, the public should not suffer by the negligence of his servants. 'In a representative government, where the people do not and cannot act in a body, where their power is delegated to others, and must of necessity be exercised by them, if exercised at all, the reason for applying these principles is equally cogent.'

"When the colonies achieved their independence, each one took these prerogatives, which had belonged to the crown; and when the national Constitution was adopted, they were imparted to the new government as incidents of the sovereignty thus created. It is an exception equally applicable to all governments. United States v. Hoar, *supra;* The People v. Gilbert, 18 Johns. (N. Y.) 227; Bac. Abr., tit. Limitation of Actions; *ib.*, tit. Prerog. E. 5, 6, 7; 5 Com. Dig. Parliament, R. S., Chitty, Law of Prerogatives, 379."

And the reason why laches is not imputable to the sovereign has been stated over and over again.

In United States vs. Kirkpatrick, 9 Wheat., 720, the Court said:

"Then as to the point of laches, we are of opinion that the charge of the court below, which

supposes that laches will discharge the bond, cannot be maintained as law. The general principle is that laches is not imputable to the government; and this maxim is founded, NOT IN THE NOTION OF EXTRAORDINARY PREROGATIVES, but upon a great public policy. The government can transact its business only through its agents; and its fiscal operations are so various, and its agencies so numerous and scattered, that the utmost vigilance would not save the public from the most serious losses, if the doctrine of laches can be applied to its transactions. It would, in effect, work, a repeal of all its securities."

In United States vs. Knight (14 Pet., 311) the Court said:

"The same principle has been decided in New York, Massachusetts, Pennsylvania, and no doubt in other states; and all upon the same ground. Not upon any notion of prerogative; for even in England, where the doctrine is stated under the head of prerogative, this in effect means nothing more than that this exception is made from the statute, for public good; and the king represents the nation. The real ground is a great principle of public policy, which belongs to all governments, that THE PUBLIC INTEREST SHOULD NOT BE PREJUDICED BY THE NEGLIGENCE OF PUBLIC OFFICERS to whose care they are confided."

This explanation of the doctrine has been many times repeated by this Court:

United States vs. Van Zandt, 11 Wheat., 184.
Dox vs. The Postmaster-General, 1 Pet., 318.
Lindsey vs. Miller's Lessee, 6 Pet., 666.
Gaussen vs. United States, 97 U. S., 584.
United States vs. Nashville, &c. Ry. Co., 118 U. S., 120.

All of the decisions of the Court concur in giving the same reason why laches cannot be imputed to the government which is, in brief, that the public interests should not be permitted to suffer by reason of the negligence or inattention of individuals who may fail in the discharge of their duties.

For the same sufficient reason we submit that laches will not be imputed to a foreign sovereign or government.

We regret to say that very diligent search has failed to bring to light any authorities which directly and in terms support this contention.

Perhaps some light is shed upon the question by the case of Vavasseur vs. Krupp (R. L. 1878, Ch. D. 9, 351) and by the rule as to laches applied in international relations (Wharton Int. Law Dig., 2d Ed., vol. 2, § 239), and if so, they support our contention.

But we think that it must be apparent that the reasons which make the rule good with respect to the Government of the United States make it good to include the Government of France.

The equities in each case are exactly the same. In the instance before us the defendant's contention is that the people of France should be made to suffer for the inattention of the public officials of France. The French people are innocent in the premises and it would be inequitable to punish them for exactly the same reasons that it would be inequitable to punish the people of the United States if the United States were a complainant.

And there is no doubt that in the courts of the United States, in this class of cases, except as the broad and perfect rule has been disturbed by treaties, and excluding a few unimportant subjects, an alien has

quite the same recognition as a citizen of the United States. The jurisdiction includes all men of all nations. In the absence of special conditions, it would be the height of folly for a citizen of the United States to say in this Court that he belonged to a favored class.

If the citizens of France came as individuals into this court of the United States and demanded equity, their case would be heard without regard to their citizenship. There would be no discrimination against them because they were foreigners. We submit that there will be no discrimination against their government.

We think that the decisions of this Court leave no possible doubt as to the existence of the rule and the reasons upon which it is based.

The question to be answered is a very simple one: Are the reasons which are good to preclude the imputation of laches in a suit by the United States of value in a suit by the government of France?

To the last detail and in every particular the reasons are obviously the same.

In the light of the authoritative decisions we have cited, we most humbly and respectfully submit that to ask the question is to answer it.

And in the concrete case before us there would seem to be specific reasons why it is impossible to hold that the Government of France and the people of France acquiesced in the things which are imputed to them.

The effect of the acts of the defendant and the class it represents has been, it may be said, to render impossible the sale of genuine Vichy in the United States.

The water of the defendant and the factitious waters produced at inconsiderable expense, paying nothing in duties or for transportation, are sold as "Vichy," and necessarily stand in the way of and preclude the importation and sale of the water of the Vichy Spring. It thus appears that the argument for the defendant is that the right of the Republic of France to sell its product in the United States has been lost or destroyed.

Certainly a court of equity representing the Government of the United States should hesitate to say that this right to import and sell has been destroyed, and particularly when the only justification is a usage which is uncertain, unreasonable and immoral.

And it is to be observed that the irresponsible use of the name "Vichy" in connection with the water drawn from soda fountains and the like, is distinctly different from the use of the word by the defendant and the class it represents. The use of the name to describe a water drawn from a soda fountain does not necessarily stand in the way of the importation and sale of complainants' goods. If there is competition it is very different from that which arises where the water is sold, as defendant sells it, in packages which in every way take the place and prevent the sale of the packages of the complainants.

We submit that the Republic of France may invoke the application of the same rule as would be applied if the United States were a party and that the charge of laches or acquiescence may be dismissed from consideration as valueless and immaterial.

The Irresponsible and Untruthful Usage of the Name "Vichy" Constitutes no Defense.

We submit that all the testimony offered by the defendant from first to last which tended to show an untruthful and misleading use of the word "Vichy" was incompetent and that it should not be considered by a Court of Equity.

We say that, in contemplation of law, the case is the same as if no testimony had been offered tending to show the use by the public of the word "Vichy" to indicate a water not drawn from the Vichy Springs.

This proposition is a sound and wholesome one, because the evidence tends only to show a custom, and there can be no proof of a custom unless the usage is reasonable, certain and moral. It is particularly applicable in cases of this character. Piracy exists just as larceny exists. To impose upon the successful producer the duty of pursuing every pirate who crosses his path, or, what is the same thing, to allow proof of irresponsible and fraudulent uses of marks of origin to be set up as a defense to an action to terminate piracy is to defeat the objects which the law is designed to accomplish.

It is elementary law that a custom or usage to be recognized must be reasonable, certain and moral.

United States vs. Buchanan, 8 How. (U. S.), 83, 102.

Tilley vs. County of Cook, 103 U. S., 155, 163.

Allen vs. St. Louis Bank, 120 U. S., 20, 39.

Vaughan vs. Holden, Cro. Jac., 80.

Taylor vs. Carpenter, 2 Wood. & M., 1, and cases cited.

Broad Bent vs. Wilkes, Willes, 360, 5 Q. B., 701.

Codman vs. Evans, 5 Allen (Mass.), 308; 82 Am. Dec., 258.

In "The case of Tanistry" (the custom by which land descended to the oldest and most worthy man of the blood and surname) there is an invaluable statement of the rule:

> "Where the people find an act to be good and beneficial, and apt and agreeable to their nature and disposition, they use and practice it from time to time, and so by frequent iteration and repetition of the act a custom is formed, and being used time out of mind it obtains the force of law. And so the Rule 44, Ed. 3, 19, is true, that no law binds the people only that which is made by consent of the people; for consent may be expressed as well by deed as by word, and that which is expressed by deed is stronger than that which is expressed by word; and that which is expressed by several and continual acts of the same kind is a custom; and so, briefly, custom is a reasonable act, reiterated, multiplied and continued by the people time out of mind. And this is the definition of custom which hath the virtue and force of a law.
>
> "Secondly, it was said that such custom ought to have four inseparable qualities: 1. It ought to have a reasonable commencement. 2. It ought to be certain and not ambiguous. 3. It ought to have an uninterrupted continuance time out of mind. 4. It ought to be submitted to the perrogative of the King, and not exalted above it.
>
> "1. The commencement of a custom (for every custom hath a commencement, altho' the memory of man doth not extend to it, as the river Nile hath a spring, altho' geographers cannot find it)

> ought to be upon reasonable ground and cause. For if it was unreasonable, no usage or continuance can make it good. *Quod ab initio non valuit, tractu temporis non convalescet.*"
>
> Davies' Rps., p. 78–87.

For centuries there has been no departure from the rule which is here laid down.

> "That cannot be called a custom which is grounded upon fraud" (Viner's Abridgment. Customs (H), 24).

In the instance before us the custom, so-called, is "grounded upon fraud."

The uses of the word "Vichy" in connection with the trade-mark "Grande Grille" by Schultz and others, and its use upon waters bearing no, or at most, a remote resemblance to the waters of the Vichy Springs were at first unmistably misleading and fraudulent. The uses continued for many years have not changed in character. The custom of using the word has no foundation in law for it is "grounded upon fraud."

Nor has the usage of the word "Vichy" been certain. It has been used in the United States to sell waters which have been broadly unlike each other (Rec., pp. 373, 374). The thereapeutic effects of the various waters which have been sold under the name have differed radically. Schultz contended that his Vichy was the only "correct composition" (Rec., p. 209).

The proof offered by the defendant shows that the word "Vichy" has been used recklessly and adventurously to describe any water charged with

carbonic acid gas, and to sell it as "Vichy," and that the word has had no certain and definite meaning except in connection with the waters of the Vichy Springs.

It follows that the word "Vichy" has not been impressed with any meaning by the public and indiscriminate use offered in evidence, and that the custom which such evidence tends to establish can have no foundation because it is not in any sense certain.

And the custom which this usage tends to establish has no foundation in law for it is not moral.

In Taylor vs. Carpenter, 2 Wood & M., 1, there was an action on the law side for deceit in using plaintiff's trade-mark on defendant's goods and selling them as and for plaintiff's goods.

In the course of the trial defendant offered to prove a general custom commonly observed in the United States, England, Germany and France for the last twenty years to use and imitate marks of foreigners, and that such custom was generally known in the commercial world and not contrary to the laws of such countries.

The evidence was excluded and the Court, speaking by Mr. Justice WOODBURY, said :

> "I am not aware of any principle, by which a a usage in this or a foreign country is competent evidence in defense of a wrong. * * * There is something very abhorrent in allowing such a defense to a wrong, which consists in counterfeiting other's marks or stamps, defrauding others of what had been gained by their industry and skill, and robbing them of the fruits of their 'good name' merely because they have shown forbearance and kindness.

"A custom ought to be, at least, moral and reasonable in order to be upheld.
Bacon's Abr. 'Custom' C.

"A party can hardly set up his own bad conduct or character in defense to an action, nor justify them because they may not have been materially worse than those of some other persons (15 Pick., 506).

"It is rather an aggravation to the plaintiffs, that many others have injured them as well as the defendants; and it is only an argument *ad hominen* to them that in England an alien in a case like this cannct recover (if such be the usage and law), but cannot affect our own sense here of what is moral toward others, and what is due to our self-respect in punishing frauds, and what seems to be demanded from us both by justice and law, however others may conduct in like cases."

The testimony thus rejected by the Court differed from that which has been produced in the case at bar in degree, perhaps, but not in kind. The name "Vichy" was adopted and used by the defendant and the class it represents because "Vichy" had a reputation and was known, and because it was hoped to profit by the existence of that reputation. The proof offered of the loose, inaccurate and irresponsible use of the word in connection with all kinds of water was proof of the fraudulent use of the name "Vichy Springs," no more and no less. This is obvious on the face of the evidence, and is directly admitted by many of the witnesses (Rec., pp 320, 322, 325, 332, 336, 365, 273, 378).

Unless a name of origin has wholly lost its meaning, unless the word "genuine" is without value to differentiate the original article from others bearing the

name, proof of its use by others is simply proof of a fraudulent usage. And this, we submit, may be said to be one sufficient reason for the many authoritative cases which discourage a recognition of laches in cases relating to commercial reputation and good-will.

McLean vs. Fleming, 96 U. S., 258, and cases cited *infra*.

Evidence of an immoral, uncertain and unreasonable usage or custom is not admissible, and we submit that the custom or usage in the present instance is uncertain, unreasonable and immoral, and that all the evidence offered by the defendant to prove it should be laid out of sight.

Mere laches in a case of this character does not defeat the right to injunctive relief.

It has been stated that a knowledge of the use in the United States of the word "Vichy" by the defendant and others was not brought home to the complainants. They had protected their exclusive right to the designation "Vichy" in the courts of France and had been in the exclusive enjoyment and possession of that name in France from time immemorial.

But if it was their duty to inform themselves as to what was being done elsewhere, and there is a constructive acquiescence covering a period of a quarter of a century or more, we submit that that fact is of secondary importance.

If the complainants are estopped it is by reason of "inexcusable laches in seeking redress." That is the very reason why they are concluded.

The subject of laches in cases of this kind has been heard and considered on several occasions and quite recently by this Court and we hesitate to do more than call attention to the facts of the case before us.

But the subject is very important and the rule applied by the Court of Appeals for the Second Circuit in this case is, we think, in conflict with the rule announced by the Court of Appeals for the Third Circuit in Actiengesellschaft, &c., vs. Amberg (109 Fed., 151), wherein the rule is said to be that delay in bringing suit in a case of this character does not impair the right to relief against further injury unless there is also an abandonment. Both decisions were rendered after the decision of this Court in the case of Sax-

lehner vs. Eisner and Mendelson Co. (179 U. S., 19), and the rule as to laches in cases of this character is one the application of which is frequently demanded. We, therefore, beg to be permitted to lay before the Court our view of the law.

But three defenses can be suggested: (**1**) that there has been acquiescence whereby a license has been created, (**2**) that there is abandonment, (**3**) that a court of equity will not aid the delinquent suitor but will compel him to seek his remedy in a court of law. There is no other possible suggestion.

To examine these propositions is to demonstrate that in the case before us the rule illustrated by McLean vs. Fleming should be applied and the complainants disciplined by losing an accounting of profits without rewarding the trespasser for persistent misrepresentation.

1. Acquiescence, however long continued, cannot create a license.

Unless there is a conveyance of good-will the owner of a mark of origin cannot by acquiescence, or in any other way license or alienate the right to the use of his mark. Nor can a court of equity actually or constructively make a license for him. This is true because a mark of origin is a definite guarantee and statement that the product to which it gives individuality comes from a particular source. A cannot empower B to represent that the goods made by B are made by A. The owners of the Vichy Springs cannot empower the defendant to represent that Saratoga water was dipped from the springs in France. A license to lie has no fountation in reason or the law.

All the cases which touch the subject support this

very obvious proposition (Kidd vs. Johnson, 100 U. S., 617; Morgan vs. Rogers, 19 Fed, 596; Pinto vs. Badman 8 R. P. C., 181; Witthaus vs. Braun, 44 Md., 303).

If the owner of the mark and the Courts have no power to make acquiescence equivalent to a license it is plain that the rule which is applied in cases where a license can be made is without force or application.

Thus in the case of a patent or an easement of any kind if there is long continued acquiescence in an adverse use, the Court having power to do so holds the party who has assented and continued to assent to the natural, reasonable and necessary consequences of his acts, and interprets them to be of the same significance as a written instrument.

But to start with the immovable fact that there can be no license and no written instrument is to render impossible any consideration much less any application of the rule.

In the case of Saxlehner vs. Eisner & Mendelson (179 U. S., 19) we understand that the rule for which we contend was applied and proved by an exception. It was there held that the long-continued user by others of the complainant's trade-mark "Hunyadi," and the complainant's label upon a well-defined class of medicinal waters precluded relief as to the name but not as to the label. The facts relating to the trade-mark and those relating to the label differed in nothing which was considered essential but this: "The infringers were making use of their trade-marks (consisting in part of the word 'Hunyadi') under license from the Hungarian government" (p. 36), whereas there was "no decision of the Hungarian authorities authorizing the use of Saxlehner's label by other parties" (p. 38).

In that branch of the case relating to the labels the rule was applicable that long-continued acquiescence —even a decision refusing relief against infringement (p, 27)—could not create a license because a license to lie is impossible in the law.

But in that branch of the case relating to the word "Hunyadi" the Court found that there actually was "as a matter of fact" (p. 36) an express license to others to use the name created twenty years before by the Hungarian Minister, and held, in substance, that the complainant, after twenty years, would not be heard to question the validity of that license.

Unlike the case of the labels, the case of McLean vs. Fleming, and the case at bar, there was no difficulty in alienating or licensing the right to use the name "Hunyadi," because the license created by the Hungarian Minister, "as a matter of fact," existed.

The "Hunyadi" case differs from the case at bar in many respects. The adverse uses of the name "Hunyadi" (in itself a meaningless word) upon a well-defined class of bitter waters in a way tending to destroy the meaning given it by the original user had operated to make the word a part of the language as indicating that particular class of waters, whereas the adverse uses of the name "Vichy" (in itself a name of origin for centuries) upon waters broadly unlike each other in a way to keep alive by reference its true meaning have not operated to impress on the word any new meaning or even seriously to impair its original meaning as indicating the waters of the Vichy Springs. In other words, the cases differ in that in the "Hunyadi" case but not in the case at bar the delay was "continued so long and under such circumstances as to defeat the right itself" (128 U. S., 514;

179 U. S., 39). The cases also differ in that the name "Vichy," unlike the name "Hunyadi" but like the labels in "Hunyadi" casewas "seized upon * * * without a shadow of justification and in fraud of plaintiff's rights" (179 U. S. 37), and in many other particulars.

But we think that the "Hunyadi" case supports our contention because in so far as it relates to the name "Hunyadi" it effectually proves the rule which was in substance applied to that branch of it which concerned the labels, that acquiescence, no mater how long continued, cannot create a license.

2. That a trade-mark may be abandoned is not less certain than that the right to use it cannot be made the subject of a license, and if the Court finds that there has been abandonment by reason of acquiescence, or for any other reason, there is no remedy. In brief, in every case the question is whether the facts show an acquiescence without abandonment, or abandonment pure and simple.

If there is acquiescence without abandonment as the original right still exists and there can be no license the acts of the trespasser with respect to which there has been acquiescence are justified and the delinquent suitor is denied all compensation for the use of his mark and reputation, and the rule of McLean vs. Fleming, is applied.

If there is an abandonment there is no trade-mark, and the bill is dismissed because there is no right of action. If there has been an abandonment by reason of acquiescence, or for any other reason there is no remedy.

Our understanding is that because the right of

property in a trade-mark or good-will is unique, the rule with respect to laches or acquiescence is unique as laid down by this Court, and in many other cases to some of which we direct attention.

Say the Court in a case in which the rule was laid down more than twenty years ago :

> " Acquiescence of long standing is proved in this case and inexcusable laches in seeking redress. * * * But infringement having been proven * * * the injunction was properly ordered " (McLean vs. Fleming, 96 U. S., 258).

This language is not mere dictum. The Court took particular pains to recite the facts of the case, and said :

> " Repetition of the facts is unnecessary, as it sufficiently appears that the respondent has been engaged in preparing and selling his pills for more than forty years ; that during that period, or more than half of it, he has been using labels and trade-marks corresponding more or less to those used by the predecessors of the complainant, some of whom, during all or most of that time, knew what the labels and trade-marks were which were used by the respondent, the evidence to that effect being full and decisive.
>
> " Negotiations took place at one time between the respondent and one of the predecessors of the complainant for an interchange of commodities, with a view that both commodities might be sold at each of their respective places of business.
>
> " Evidence of a decisive character is exhibited in the record to show that the complainant or his predecessor knew throughout what description of labels and trade-marks the respondent was using ; and it does not appear that any objection was ever made, except as heretofore stated and explained.

> Once, the respondent was requested to insert the initials of his Christian name before his surname, in the label; and it appears that he immediately complied with the request" (257).

In Menendez vs. Holt, where there had been an acquiescence of eleven years with full knowledge and without protest, the Court said:

> "Counsel in conclusion earnestly contends that whatever rights appellees may have had were lost by laches; and the desire is intimated that we should reconsider McLean v. Fleming, 96 U. S., 245, so far as it was therein stated that even though a complainant were guilty of such delay in seeking relief upon infringement as to preclude him from obtaining an account of gains and profits, yet, if he were otherwise so entitled, an injunction against future infringement might properly be awarded. We see no reason to modify this general proposition, and we do not find in the facts as disclosed by the record before us anything to justify us in treating this case as an exception" (128 U. S., 523).

In Lawrence Man. Co. vs. Tenn. Man. Co., 138 U. S., 549, the rule is referred to and approved and it is pointedly applied in Brown Chemical Co. vs. Meyer, 139 *Ib.*, 546.

In the still more recent case of Singer Man. Co. vs. June Man. Co., 163 U. S., 186, 202, the rule of the earlier cases is approved and applied.

As we have pointed out, we do not understand that in the case of Saxlehner vs. Eisner & Mendelsohn Co., the rule was sought to be in any degree modified.

Referring to an acquiescence of twenty years (102 Fed., 551), in a very general use of the *indicia* involved the Court of Appeals for the Third Circuit say:

"It is no answer to his complaint against any particular person who has so used it to say that such person is not the only one who has done so, for a trespasser cannot justify upon the ground that others have committed like trespasses. Therefore the appropriation by the appellee of the appellant's box and labels is not excused by showing merely that others had similarly appropriated them. It is essential that it should also appear that the appellant had, by its acquiescence, abandoned its exclusive right, and, 'to establish a defense of abandonment, it is necessary to show, not only acts indicating a practical abandonment, but an actual attempt to abandon.' Saxlehner v. Eisner & Mendelson Co., 179 U. S., 19, 21 Sup. Ct., 8, 45 L. Ed., 60" (Actiengesellschaftt, &c., v. Amberg, 109 Fed., 151).

In the recent and carefully-considered case of Bissel Chilled Plow Works vs. T. M. Bissel Co. (121 Fed Rep., 357, 375) there was a delay with knowledge of about six years. An attempt was made to take the case out of the rule by urging the absence of a fraudulent intent. An injunction was granted.

Rodgers vs. Philp (1 O. G., 29; Browne on Trade-Marks, 2nd Edition, p. 661): "These goods," said the Court, "have been manufactured in Germany * * * for nearly if not quite a quarter of a century." It appeared that complainant had notice (*Ib.*, p. 660). An injunction was granted (*Ib.*, p. 661).

Wolfe vs. Barnett: A delay of about ten years (24 La. Ann., 97). "Wolfe's Schnapps" was involved.

Filley vs. Fassett: A delay of about sixteen years (44 Mo., 173). "Charter Oak Stoves" was in issue.

Cohn vs. Gottschalk: A delay of five years (14 Daly, 542).

Manhattan Medicine Co. vs. Wood: The rule was recognized in referring to a delay of fourteen years (4 Cliff., 461).

Amoskeag Man. Co. vs. Garner: A delay of nine years (54 How. Pr., 298, reversing the court below). The geographical word "Amoskeag" was sustained.

Gillott vs. Esterbrook: There was notorious use of the numerals "303" for about fifteen years (47 Barb., 455; affirmed, 48 N. Y., 374).

Coleman vs. Crump: The defendant, a label printer, had been manufacturing and selling the infringing labels in many different styles which had been in use by the trade for about fifteen years (70 N. Y., 573).

Sanders vs. Jacobs: A delay of four years (20 Mo. App., 96).

The rule applied in these cases is referred to with approval in many others:

Amoskeag Man. Co. vs. Spear, 2 Sand, S. C., 599; 128 U. S., 524.

Consolidated Fruit Jar Co. vs. Thomas, Cox's Man., Case, 665.

Julian vs. Hoosier Drill Co., 75 Ind., 408; 128 U. S., 524.

Sawyer vs. Kellogg, 9 Fed., 601.

Williams vs. Adams, 8 Biss., 452.

Le Page Co. vs. Russia Cement Co., 51 Fed., 941.

In the present case there has been no abandonment and there is nothing in the case to support the contention that there has been, if any such contention is suggested on behalf of the defendant.

With the familiar doctrine before us that all the presumptions are against the defense of abandonment, the fact that the French Republic is a complainant,

grounds upon which courts of equity take jurisdiction s to protect the public against fraud and imposition.

Singer Manufacturing Co. vs. June Manfg. Co., 163 U. S., 200, 187.
Pillsbury vs. Pillsbury-Washburn Co., 64 Fed., 845.
Montgomery vs. Thompson, 1891 A. C., 217.
Pillsbury Co. vs. Eagle, 86 Fed., 608.

Manifestly, unless there can be injunctive relief, whereby the fictitious and misleading use of the trade-name or trade-mark can be prevented, one defendant may follow another, and there would be an "unrestrained right to deceive and defraud the public by so using the name as to delude them into believing that the machine made by one person was made by another" (163 U. S., 187).

It is obvious that this case is not one which should be sent to a court of law.

We most respectfully submit in the case before us (1) that the defendant cannot justify the continued use of our designation on the ground that a constructive license has been created by acquiescence, because there is no power to make a license; (2) that there has been no abandonment, and there can be no justification upon that ground; (3) that the Court will not require us to seek our remedy in a court of law, for there is no remedy except in this court.

The necessary and only possible conclusion is that the rule of McLean vs. Fleming, Menendez v. Holt, and of the Third Circuit, should be applied to the case and the complainants punished in reason, without rewarding the trespasser for persistent turpitude and misrepresentation by actually dividing the living child in two.

The right to protection guaranteed by the treaty with France may be invoked, notwithstanding the duration and extent of the infringements.

The bill of complaint alleges that the complainants "are entitled to be protected in the exclusive use of the word 'Vichy' as a trade-name and as a commercial name and otherwise, by virtue of the treaties at present existing and in force between the Republic of France and the United States, and particularly the treaty between the United States and France and other nations, concluded at Paris on the 20th day of March, 1883, and proclaimed by the President of the United States on the 11th day of June, 1887, the Eighth Article of which treaty is as follows, to wit:

"'ARTICLE VIII.

"'The commercial name shall be protected in all the countries of the Union without obligation of deposit, whether it forms part or not of a trade or commercial mark."

We respectfully submit that there could be no better illustration of the conditions which it is the purpose and function of this article of the treaty to correct than is afforded by the case at bar.

That "Vichy" is a commercial name ("nom commercial") requires no demonstration. It would be hard to find a better example of a "commercial name."

Opinion of Judge TOWNSEND, Rec., p. 244 *et seq.*, 57 Fed., 37.

Congress & Empire Spring Co. vs. Rock Congress Spring Co., 45 N. Y., 291.

Radde vs. Norman, L. R., 14 Eq., 348.
Ragget vs. Findlater, L. R., 17 Eq., 29.
Apollinaris Co. vs. Norrish, 33 L. T. R. N S., 242.
Dunbar vs. Glen, 42 Wisc., 118.
Anheuser-Busch Brewing Assn. vs. Piza, 23 Blatch., 244 ; 24 Fed., 149.
Lever Bros., Limited, vs. Pasfield, 88 Fed., 484.
City of Carlsbad vs. Kutnow, 71 Fed., 167.
Hill vs. Lockwood, 32 *Ib.*, 389, 395.

That the complainants enjoy in France to all intents and purposes the exclusive right to use the designation "Vichy" is equally clear.

Action by the legislative department of the government is not necessary in order that the protection guaranteed by the treaty may be invoked.

Saxlehner vs. Eisner & Mendelson, 179 U. S., 19.
United States vs. Rauscher, 119 U. S., 407, 418, and cases cited.

The purpose of the treaty is plainly set forth in the preamble, the averments of which are "to be regarded as truths admitted" (32 Me., 222):

> "Equally animated by the desire to assume, by common accord, A COMPLETE AND EFFICACIOUS PROTECTION to the industry and commerce of the subjects of their respective states, and to contribute to the safeguard of the rights of inventors, and to the loyalty of commercial transactions, have resolved to conclude a Convention to that effect" (U. S. St. at Large, Vol. 25, p. 1375).

The object of the treaty before us was to make sure of the enjoyment of foreign good-will and to eradicate fraud and misrepresentation.

Among the provisions inserted to accomplish this object is that relating to commercial names:

> "The commercial name shall be protected in all the countries of the union without obligation of deposit whether it forms part or not of the trade or commercial mark" (U. S. Stat. at Large, Vol. 25, p. 1376).

At the time this provision was ratified the complainants were, as they now are, the owners of the Vichy springs; their good-will, based upon their trade-name "Vichy," was, as it still is, of indisputable foundation, and was, as it still is, undisputed within the jurisdiction of France.

It is not less certain that many persons in the United States were using the word "Vichy" as the name of waters which were not genuine "Vichy" (Rec., p. 403). These persons obviously had acquired no rights of any description. They were, we submit, doing exactly what the treaty declares shall not be permitted.

It must be reasoned that the guaranty that "the commercial name shall be protected" contemplates that without such guaranty "the commercial name" is in danger of injury. It is equally plain that injury could result only from infringement or spoliation of the name. It is clear, therefore, that it is against infringement and spoliation that the provision is directed.

We submit that it provides for the "complete and efficacious" eradication and prevention of infringement and spoliation of foreign commercial names no matter when it began by which the enjoyment of an existing good-will is defeated.

Because of the circumstances of the case, if American waters may be called "Vichy" genuine "Vichy"

cannot be sold here and the complainants are despoiled of their name.

We say that as long as "Vichy" is our "commercial name" in France, by virtue of this treaty such spoliation is impossible. It is impossible to "protect" and at the same time permit spoliation.

It cannot be reasoned that the treaty which is the supreme law of the land can be defeated by proof that there has been a continuous, uncertain and unreasonable use which began in fraud of the name which it is guaranteed shall be protected.

The treaty cannot be read to say:

> "The commercial name shall be protected in all the countries of the union * * * provided it has not been or will not be infringed."

It cannot be said that the treaty shall be nullified because if enforced it will prevent the very practices which it was intended to prevent. (See Geofroy vs. Riggs, 133 U. S., 258 at p. 270).

The plain meaning of the treaty and the only meaning consistent with its purpose is the meaning which protects our name and property. It would have been stated no more plainly had it read:

> "A name valid in the country of origin shall be protected in all countries of the union without obligation of deposit,"

or to put the concrete case

> "A name valid in France shall be protected in the United States."

Necessarily protection under the treaty depends on the status of the name in the country of origin and on it alone. Otherwise the provision is a nullity and the words "without obligation of deposit" an absurdity.

Protection depending on the status of the word here existed without the treaty. It should not be reasoned that the intention in making the treaty was to add nothing to rights already existing—to indulge in a piece of international pleasantry. The salient intent was to increase the protection of foreign names —to prevent their appropriation in other countries without compelling their owners to take steps (by registration or otherwise) to insure their protection in those countries.

By prescribing that the commercial name shall be protected in all countries of the Union reference is necessarily made to the country of origin to discover whether or not there exists a commercial name to be protected. If the name is a commercial name in the country of its origin it is entitled to protection. When it ceases to be a commercial name and becomes public property in the country of origin there is nothing to which the protection guaranteed by the treaty can attach, but as long as it remains a commercial name there the protection guarateed by the treaty will be afforded by the Courts.

In Saxlehner vs. Eisner and Mendelson *(supra)* the Court reasoned that because the name "Hunyadi" had become "public property in the Kingdom of Hungary" in view of the plain terms of that treaty "it is difficult to escape the conclusion that it also became so here." We submit that because the name "Vichy" is the undisputed "commercial name" of the complainants in France in view of the plain terms of this treaty it is difficult to escape the conclusion that it will be "protected" here.

The unmistakable intent of the treaty was to prevent the loss by foreigners of their commercial names,

whether the loss should result from anticipatory use, infringement or spoliation.

By this provision the plaintiffs were guaranteed the right to sell "Vichy" as "Vichy" in the markets of the United States. That right was a continuing right imposing no duty to enter those markets at any particular time, but lasting as long as the word was a commercial name in France unimpaired by the practices here which the treaty was framed to prevent, no matter how long continued.

The protection securing that right may be invoked whenever the owners of the name may elect, whether they are sending their first bottle of water to our markets or (because of the improvement in transportation, the accumulation of wealth and the increasing appreciation of the genuine water) are extending their operations.

Assuming for the sake of the argument much more than the defendant can conceivably claim concerning the uses of the word "Vichy" it may be said that the situation in effect is this: By the dextrous use of fraudulent misrepresentations the owners of the Vichy Springs have been headed off from the markets of the United States.

We submit that even if it can be said that Equity (unaffected by legislative action) will protect the defendant in holding on to the tool used to bring about this result, we may invoke the statutory protection guaranteed by the treaty which cannot be defeated by showing the existence of the very abuses which it is its purpose and function to prevent.

There is no material defense but laches. We submit that as affecting our right to protection under the treaty that defense is without application.

In conclusion, we respectfully submit that the case may be summarized as follows:

The name "Vichy" is an inseparable incident in marketing the waters of the Vichy Springs and an essential part of the property owned by the Republic of France. The use of the name which the decree sanctions in effect makes it impossible to sell genuine "Vichy" in the markets of the United States and thus impairs the value of the Vichy Springs. In substance and effect the decree takes from its owner and delivers over to the wrong-doers who have laid hold of it part of the value of the land owned by the French Republic. We submit that the whole weight and reason of the common law and the plain dictate of the treaty preclude the acceptance of this result.

There is a narrow and a broad view of the case: The narrow view makes delay imputed to a sovereign state the only material consideration. The broad view proceeds upon the assumption that as long as the truthful use of a name can be differentiated from its use in a spurious relation, equity will protect the truth.

We most respeatfully submit that the case should be remanded to the Court below with instructions to extend the decree so as to restrain the use of the word "Vichy" as prayed in the bill of complaint.

Respectfully submitted,

CHARLES BULKLEY HUBBELL,

ARCHIBALD COX,

Counsel for Petitioners.

FILE COPY.

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Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 53.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT THERMAL DE VICHY,
Petitioners,

vs.

THE SARATOGA VICHY SPRING COMPANY,
Respondent.

PETITION FOR REHEARING.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now come La Republique Francaise and La Compagnie Fermiere de L'Etablissement Thermal de Vichy, the petitioners in this cause, and respectfully present their petition for rehearing, and submit the following reasons why their prayer should be granted:

I. This was a suit in equity instituted by the French Republic and the Vichy Company, owner and lessee, respectively, of the Vichy Springs in France, to re-

strain the use by The Saratoga Vichy Spring Company of the designation "Vichy" as a name of a water not drawn from the Vichy Springs.

The Court held in substance that when the defendant entered the market your petitioners had acquired "an exclusive right to the use of the word 'Vichy' as against" the defendant, but that by reason of delay in instituting suit this right could not be enforced.

II. The principal questions presented and considered were (**1**) whether the French Republic could invoke the same rule as the United States, to wit, that laches is not imputable to the neglect of a government to pursue trespasses upon its rights and (**2**) whether the rule laid down in earlier decisions of this Court that in a case of this character delay in seeking relief defeats the right to an accounting, but does not defeat the right to an injunction against the continuing wrong, is applicable to this cause.

III. The Court expressly left the first question "open to doubt," and in so doing, as we respectfully venture to think, overlooked and inadvertently overruled the decision of this Court in the case of United States vs. Insley (130 U. S., 263, 265), which expressly and necessarily repudiates and displaces the doctrine that where the Government is suing for the prosecution of a private and proprietary right, laches is imputable to it, by the enunciation of which doctrine alone any decision upon the rights of the French Republic in the present case was avoided. Other decisions of this Court not less plainly indicate that in the case of a republic (as distinguished from a sovereignty represented by an individual capable of owning private property as such) the question whether property or a

right therein is governmental depends solely upon whether it is owned by the Government (San Pedro, &c., Co. vs. United States, 146 U. S., 120; Van Brocklin vs. State of Tennessee, 117 U. S., 151, 158; United States vs. Nashville Railway Co., 118 U. S., 120).

The Court, in its opinion, says: "If the Republic be a necessary party to the suit here, as it sues in its private and proprietary capacity, the defense of laches is available against it. * * * If it be an unnecessary party, the defense of laches may certainly be set up against the Vichy Company." Because, as found by the Court, "the title of the French Republic to the springs of Vichy is clearly established," the French Republic is a necessary party to the suit.

A decree could not be entered in favor of the Vichy Company alone, because it has no property or right in the name whatever. The owner of the springs is necessarily the only person entitled to the exclusive use of the name (if any one is), because the name denoting origin cannot be separated from the source of origin. The Vichy Company, for example, has no more right than the defendant to use the name upon waters not drawn from the springs at Vichy. That a decree could not be entered in favor of the Vichy Company alone has been in substance directly determined in cases presenting analogous circumstances (Krauss vs. Peebles, 58 Fed., 585, 591; *In re* Apollinaris Co., 1891, 2 Ch., 213; 8 R. P. C., 154; see also Moxie Co. vs. Baumbach, 32 Fed., 205).

On the other hand, it is certain that it is impossible to enter a decree determining that the word "Vichy" may or may not be used upon waters not drawn from the Vichy Springs without vitally affecting the interests of the owner of those springs. It is a fundamental

principle of justice as well as the rule in equity that all persons "interested in the object of a suit and whose rights will be directly affected by the decree must be made parties to the suit" (McArthur vs. Scott, 113 U. S., 341, 391-2; Shields vs. Barrow, 17 How., 130).

The French government is, therefore, a necessary party and, in so far as the injunction is concerned, the only necessary party to the suit. It is suing to enforce its own rights and to protect its own property—part of its public domain—for its own benefit.

This is plainly demonstrated by the situation which confronts it to-day. It cannot come into Court when the lease of the springs to the Vichy Company expires and seek then to assert the rights which the Court expressly left "open to doubt," because it will be met by the plea of *res judicata*.

The decree in this suit, to which the French Republic is a party, by denying the rights which the complainant seeks to assert denies them forever and destroys, *pro tanto*, the value of the property of the French Republic.

If it be true that the Court has overlooked the decisions holding that all property owned by the Government is governmental and not susceptible of being lost by laches, then the Court has inadvertently decided against the rights which the French Republic sought to assert, at the same time in effect denying the French Republic its day in Court by leaving a question of controlling importance in the case "open to doubt."

It was recently said by this Honorable Court: "As a foreign government has seen fit to submit its case to the Court of the country with whose citizens its con-

troversy exists, it would be unfortunate if through any mistake it was prevented from carrying questions of law to the Court of last resort" (Columbia vs. Cauca Co., 190 U. S., 524, 525).

It would be equally unfortunate if by an oversight a question has been left unanswered which is directly presented and if resolved in favor of the foreign government entitles it to the relief it seeks. It is, therefore, most humbly submitted that if the Court has overlooked the decisions to the effect that laches is not imputable to the Government of the United States when suing to assert its proprietary rights, a re-argument should be granted to the end that the question whether the French Republic may invoke the same rule may be fully presented and the alleged rights of the French Republic may not become *res judicata* without a full hearing and direct decision.

IV. In dealing with the other question, whether in a case of this character laches defeats the injunction against the continuing wrong as well as the accounting, the Court intimates that the defense of laches is not available in a case of actual fraud, and finding in the defendant's labels little evidence of a fraudulent intent decides by the result alone, that the laches defeats the injunction as well as the accounting.

We very respectfully venture to suggest that if by reason of the exceptional circumstances to which we have alluded, a rehearing is granted, this question may also be considered, and respectfully urge the following reasons in support of this suggestion:

The rule that the defense of laches would not be available in a case of actual fraud (illustrated by McIntyre vs. Pryor, 173 U. S., 38), which alone the Court considered may not be applicable to the present

case without affecting the petitioners' right to injunctive relief. That doctrine, it is respectfully submitted, is not the doctrine on which McLean vs. Fleming, 96 U. S., 245; Menendez vs. Holt, 128 U. S., 516, and other like cases rest, and is not the doctrine which your petitioners sought to invoke. In all these cases the question has not been whether the defense of laches is available. Laches was available in McLean vs. Fleming and Menendez vs. Holt, and its penalty imposed by defeating the accounting. In the present case laches is available and the same penalty should be imposed. And since the Vichy Company, and not the French Republic, would be entitled to profits, it is plain that there can be no question but that by reason of laches profits are not recoverable. But the question remains whether laches defeats also the remedy against future injury from the continuing wrong. It is respectfully submitted that the reasoning of the cases of McLean vs. Fleming and Menendez vs. Holt rests in no degree upon the mental attitude of the defendant, but rests solely upon the nature of the right involved and of the wrong.

In that portion of its opinion in this case numbered I, the Court in substance decides that at the time the defendant entered the market the owner of the Vichy Springs had an exclusive right to the use of the word "Vichy" as against the defendant. From this premise, we respectfully submit, the conclusion inevitably follows that the defendant's use of the word when it began was unlawful and that there was in this case identically the same fraud as appeared in the case of Menendez vs. Holt, wherein the defendant used the name clearly distinguished by accessories and in an honest, though mistaken, belief that he owned the

right to use it, and wherein the rule which your petitioners sought to invoke was reaffirmed and expounded.

The question whether laches defeats the right to relief against future injury from the continuing wrong in cases of this character is very different from the question whether the fraud of the defendant has been so unconscionable that he will not be allowed to invoke the defense of laches at all. The former question, which is of controlling importance in this case, has been decided (if at all) only tacitly and by the result.

Your petitioners, therefore, respectfully pray that this cause be restored to the docket and a reargument be ordered as to the questions whether the French Republic may invoke the same rule as to laches as could be invoked by the United States if the United States were the complainant—upon which no opinion was expressed by the Court, and as to whether the rule in this class of cases that laches is applicable and defeats the right to an accounting but does not defeat the right to an injunction against future injury from the continuing wrong is still law, which was decided by the result alone without any expression of opinion or any indication that it was considered.

The undersigned members of the Bar of this Honorable Court, after carefully examining the opinion of the Court in this cause, humbly conceive that this cause is one which may properly be reheard by this Court, if this Court shall see fit so to order, and they therefore respectfully certify accordingly.

New York, January 21, 1904.

CHARLES BULKLEY HUBBELL,
ARCHIBALD COX,
Counsel for Petitioners.

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612

No. 677. 325

Office Supreme Court U. S.
FILED
MAY 19 1902
JAMES H. McKENNEY,
Clerk.

Br. of Brackett for Resp't.

Supreme Court of the United States

Filed May 19, 1902.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ESTABLISSEMENT THERMAL DE VICHY,

Petitioners,

vs.

SARATOGA VICHY SPRING COMPANY.

677.

ANSWER BY DEFENDANT TO PETITION FOR WRIT OF CERTORIARI.

EDGAR T. BRACKETT,
WALTER P. BUTLER,
Defendant's Counsel.

TOWN HALL, Saratoga Springs, N. Y.

Supreme Court of the United States.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ESTABLISSEMENT THERMAL DE VICHY, Petitioners, vs. SARATOGA VICHY COMPANY.	Answer to Petition for Writ of Certiorari.

The writ should not be granted where no question of gravity or importance arises.

Lau au Bew, Petitioner, 141 U. S. 583, 587, 589.

The bill was filed to enjoin the use by the defendant of the name "Vichy."

No question of public importance was involved, but merely a question of fact between the parties whether or not the defendant had infringed the complainant's alleged trade mark, or whether the facts proved presented a case of unfair competition. It must be apparent from the nature of the case that no question of sufficient importance can come up to warrant the granting of the writ.

The only points raised by the petitioners are that the court erred in so far as its decision proceeded on the ground that the complainants were guilty of laches, and that its decision was subsersive of the rights guaranteed to the petitioners by Article 8 of the Commercial Treaty of March 20, 1887.

The complainants' label is printed in black letters on white paper and wholly in the French language.

COMPLAINANTS' LABEL.

A MEDICINAL BEVERAGE.
BOTTLED WITH THE NATURAL GAS OF THE SPRING ONLY.

NATURAL

SARATOGA VICHY
WATER

A FINE TABLE WATER.

THE ONLY ALKALINE SPRING
AT
SARATOGA, N.Y.

The deposit in this water is a Natural Mineral precipitate and disappears on opening.

"The only water safe for the traveller to drink is a Natural Mineral Water."
SIR HENRY THOMPSON, F.R.C.S., London.

REV. B. K. PEIRCE, D. D., Boston:
"Most delicious of Saratoga waters, and far the best for indigestion and acidity of the stomach. Incomparably the best table water."

and the other in red and black letters on white paper, with a small neck label.

The Court held that the facts presented a case of unfair competition to the extent that on the small neck label the word Saratoga was not as prominently displayed as the word Vichy, and enjoined the use of the word Vichy unaccompanied by words indicating the origin of the water displayed equally as prominent.

So far as the decision proceeded on the ground of laches, the Court read the rule of law correctly.

So late as October, 1900, this Court in the Saxlehner case said to the complainant, "By "twenty years of inaction she has permitted the "use of the word by numerous importers and it "is now too late to reinstate her original title."

Saxlehner vs. Eisner & Mendleson Company, 179 U. S., 19, 36 and 37.

The delay in the present case was over twenty-five years.

As to the claim that laches cannot be imputed to the French government, it being a sovereign power.

The cases which hold the doctrine that laches cannot be imputed to a sovereign, reach only a government wherein the tribunal in which the suit is pending is located. It has never been ruled with respect to a foreign power suing in our courts.

The reason for the rule that laches cannot be imputed to the King, is, that as he is occupied with the cares of government he ought not to suffer from the negligence of his officers and servants.

Gibson vs. Chotteau, 13 Wall, 92, 99.

But it is manifest that this reason fails in the case of one government seeking redress in the jurisdiction of another. The business of a foreign sovereign with his cares of state is of no concern to our Courts, or our people. The foreign government can have no more standing than a foreign citizen, or corporation. The right to such plea is reserved to the home government alone and is not even permitted to one of its citizens. It would be a most extraordinary thing if we should grant to a foreigner, even if it be a state, a right which we deny to one of our own citizens, and it would be the more unjust in this case, where the foreign state is joined as complainant, not to protect any rights which it has, but only to aid, indirectly, one of its private corporations.

There is further answer to the proposition in the treaties between the government of France and the United States. Article II of the Industrial Property Treaty of 1883, provides that "The subjects ' or citizens of each of the contracting states shall ' enjoy, in all the other states of the union, so far ' as concerns patents for inventions, trade or com- ' mercial marks, and the commercial name, the ' advantages that the respective laws thereof at ' present accord, or shall afterwards accord, to ' subjects or citizens. In consequence they shall ' have the same protection as these latter, and the ' same legal recourse against all infringements of ' their rights, under reserve of complying with ' the formalities and conditions imposed upon sub- ' jects or citizens by the domestic legislation of ' each state."

The Court will take notice of this treaty.

1 Greenleaf on Ev., (15th Ed.) p. 7 note b.

The provisions of this treaty do not, in terms, include the foreign state itself, but strictly limit the rights granted to its "Subjects or Citizens," therefore, the state itself has no standing in court under the letter of the law. But if it should be held to come within the spirit of the treaty, then it comes into this court, as the treaty provides, with no other, or greater, rights than a subject, or citizen of this country, and cannot plead that laches cannot be imputed to it.

As to the claim that any question under the commercial treaty between this government and France is involved.

Article 8, of this treaty, referred to by the complainant, reads as follows: "The commercial "name shall be protected in all the countries of "the union without obligation of deposit, whether "it forms part or not of a trade or commercial "mark."

This article merely dispenses with the obligation of deposit, and does not in any way affect the Rule, that rights, however acquired, may be lost by laches.

A further and complete answer is that this Article was proclaimed by the President in 1887, after the defendant had acquired and been enjoying its rights for fourteen years.

Treaties are of no greater obligation than an Act of Congress.

Fong Yue Ting vs. United States, 149 U. S. 698, 720-1.

This treaty of 1883 is not retroactive, and does not effect the rights of individuals acquired prior to its ratification.

Haver vs. Yaker, 9 Wall, 32.

U. S. vs. Arrendondo, 6 Pet. 748.

Prevost vs. Greneaux, 19 How, 1.

The complainants, therefore, are not helped by this Article of the Treaty.

It is respectfully submitted that the law has been correctly applied to the case, that no treaty rights are involved and that no question of importance arises within the rule announced in Lau au Bew, Petitioner, 141 U. S., 583, 587-9, and that therefore, the writ should be denied.

If, however, the court decide to grant the writ the defendant asks the court to grant to the defendant the same right to review the decision of the United States Circuit Court of Appeals, as if the defendant had originally petitioned therefor.

Dated May 12, 1902.

EDGAR T. BRACKETT,
WALTER P. BUTLER,
Defendant's Counsel,
Town Hall, Saratoga Springs, N. Y.

FILE COPY.

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Office Supreme Court U. S.
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NOV 4 1903
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ETABLISSEMENT THERMAL DE VICHY,

Appellants,

ag'st

THE SARATOGA VICHY SPRING COMPANY,

Appellee.

Brief on Behalf of Appellee

EDGAR T. BRACKETT,
Counsel for Appellee,
Saratoga Springs, New York.

IN THE

SUPREME COURT

OF THE UNITED STATES

La Republique Francaise and La Compagnie Fermiere de L'Etablissement Thermal de Vichy,
Appellants,
against
The Saratoga Vichy Spring Company,
Appellee.

Brief on Behalf of Appellee No. 53

This is an appeal by the complainants from a decree of the United States Circuit Court of Appeals for the Second Circuit, which, in the main, affirmed a former decree of the Circuit Court for the Northern District of New York, dismissing the complainants bill.

The matter is brought into this court by a certiorari granted on the 11th day of June, 1902, (page 463), upon a petition therefor, filed by the complainants.

The action was begun on the 27th day of June, 1898, by the issuance of a subpoena (page 79), and the subsequent filing of a bill in the Circuit Court of the United States for the Northern District of New York, (page 1 *et seq.*). In this bill the complainants alleged that the orator, Republic, is an inde-

pendent State and one of the sovereign powers of the earth, having its main territory, and chief seat of authority, in that part of the Continent of Europe known as France, and under French law is denominated the State, having existence, in legal contemplation, immutable and perpetual, nothwithstanding any changes in the form of its government, or of dynasty, or succession; that the orator company, is a corporation organized and existing under the laws of said state, and that the defendant is a corporation organized and existing under the laws of the State of New York, and is an inhabitant of the Northern District, where the bill is filed, (record, p. 1).

After then setting out the facts showing that it is proper that the action be brought in the Circuit Court, it is alleged that in the territory of the orator, the State, in a political subdivision thereof denominated as the Department of Allier, there is a municipality, or town, by the name of Vichy, situate about two hundred and twenty-seven miles south-southeasterly from the city of Paris, which town has been known in civilized countries since the discovery of the locality, in the period of the Roman Empire, and has been clebrated and renowned for the waters obtained from mineral springs situated therein, and thereabouts, which waters for ages have been called by the term Vichy, that the title to the springs was originally in the feudal Lords of the realm, and the various steps are set out by which the orator, the State, became the sole owner thereof, (record, p. 2); that one of the springs mentioned in the bill is not situated in the town of Vichy, but in one of the adjoining districts, and is

called " Hauterive "; that up to the year 1853 these springs were operated by the State, through officers appointed for that purpose, and were then, and are still, protected from trespass, or diversion, by a perimeter of protection embracing a portion of the town of Vichy and some adjoining villages; that under the operation of the State, subject to suitable regulations, the public was afforded access to the springs to drink and bathe, and the water was prepared and sold by bottles in various parts of the world, all of which operations were at that time, and since, in connection with the complainant Company, are, ~~the~~ a source of revenue to the State; that these waters became celebrated throughout the world, including the United States, and that the word Vichy became of great value to the orator, the State, and constitutes, and has long constituted, an important and necessary incident and means to the sale of the water, (record, p. 3).

That in the month of June, 1853, the State leased the exclusive right and privilege of operating the springs at Vichy, for a fixed sum as rental and a chain of title is set out by which such exclusive lease has since, and before the filing of the bill, become vested in the complainant company, and that such lease extends until the year 1934, and comprehends the right to use the word Vichy to designate the waters, (record, p. 4); that since the acquisition of the lease, the orator company has extended the sale of the water throughout the world, including the United States, and since 1854, among other things, has evaporated the water and sold the salts and resultant products, under the name of Vichy salts, and that the waters of the springs have been

sold in large quantities throughout the United States; that the bottle of the complainants has been one of the means by which the waters have been known and identified over the civilized world, where the waters have been sold, and it is described, as is also a characteristic label of the complainants, and the manner of its application to the bottle, (record, pp. 5, 6); that this bottle and label were used in advance of any others, and that the waters have been known and identified both by bottle and label, and that the orators were entitled to be protected in the exclusive use of the designation Vichy, and of the bottle and the label, and from any unfair imitation thereof; that the complainants are entitled to be protected in the exclusive use of the word Vichy as a trade name, and commercial name, by virtue of treaties existing between the Republic of France and the United States, particularly a treaty concluded at Paris on the 20th day of March, 1883 and proclaimed by the President of the United States on the 11th day of June, 1887, in one article of which it is provided that the commercial name shall be protected in all the countries of the Union, without obligation of deposit, whether it forms part, or not, of a trade, or commercial mark, (record, p. 6).

It is then set out in the bill that the defendant, without the consent of the complainants, or either of them, and knowing their rights, was at the time of the verification of the bill, and had for some time, been fraudulently and unlawfully making use of the designation, or trade mark, Vichy, as a name for certain waters taken by the defendant from a natural spring near Saratoga; that the defendant falsely

and fraudulently made use of the word Vichy as a part of its corporate name, and in other ways, in violation of the rights of the complainants, and to their injury, and fraudulently imitated the bottle and label of the complainants, and the bottles and labels are described, the use of such label and bottle being for the purpose of misleading and deceiving the public, and enabling the defendant to sell the water from its spring, as and for the water of the complainants, (record, p. 7); that among other labels used by the defendant is a neck label in which the word Saratoga appears in small type, and the word Vichy in large and conspicuous type; that the use of the word Vichy in the different ways set forth constitutes an infringement of the rights of the complainants, and is inequitable and fraudulent, and constitutes unfair and inequitable competition, and tends to promote the sale of the water from the defendant's spring, as that of the complainants, to the complainants' damage, (record, p. 8); that the good will of the business of selling Vichy water is of great value and that the defendant should be compelled to make disclosure, and account for the profits fraudulently diverted to itself, from the complainants, (record, p. 9).

Judgment is thereupon prayed that process shall issue and the defendant be compelled to answer; that it be enjoined from making use of the word Vichy as a designation of any water taken from its spring, or as a part of its corporate name, or using its labels with the word Vichy thereon, and from doing any act or thing calculated to cause the sale of any water other than that of the complainants, under the name Vichy, (p. 9).

Annexed to the bill are two labels, one, that of the complainants, in the French language, the other, that of the defendant, of course, in English, (pp. 11-13).

The answer of the defendant, among other things, denies that the complainants, or either of them, is entitled to be protected in the exclusive use of the word Vichy as a trade name, or commercial name, or by virtue of any treaty; denies that there has been any fraudulent use of the word Vichy by the defendant, or that there has been any resemblance between the bottle or label of the defendant, and the complainants, or that any persons have ever been deceived by the defendant's bottle, or label, (record, pp. 18, 19).

It is then set out that in the town of Saratoga Springs, Saratoga County, in the State of New York, mineral springs have existed, commonly known by the name Saratoga, from time out of mind; that these waters were first visited by white men in August, 1767, when Sir William Johnson was carried thither by the Mohawk Indians; that the reputation and medicinal properties of these waters early became known throughout the civilized world, and at the time of the formation of Saratoga County in 1791, the waters from the springs at Saratoga had become universally known as Saratoga waters, and Saratoga spring waters, and, from that date down to the present, the name Saratoga, in association with mineral waters, has had the accepted meaning throughout of the world of mineral waters from some of the springs at Saratoga Springs; that from time immemorial a large number and variety of mineral springs have existed

at Saratoga, new springs being continually found, all of which are known as Saratoga waters, and all dependent, for their reputation, upon being waters from Saratoga; that Saratoga has become the world's most famous watering place, and is visited yearly by thousands of people from all parts of the world, and that the waters are shipped, and have become known, throughout the world, so that the word Saratoga has for more than a hundred years been a valuable part of their name, (p. 19); that in the year 1876 (should be 1872, *see* page 40) the spring now owned by the defendant was discovered, and was then given the name of Saratoga Vichy Spring and, thereupon applied for a trade-mark entitling it to the exclusive use of the name Saratoga Vichy Spring Company, and on the 8th day of May, 1877, such trade-mark was duly registered and that, ever since that time, the defendant has had the right to the exclusive use of the name Saratoga Vichy Spring Company, and has ever since made use of it and enjoyed it; that the defendant is incorporated under the laws of the State of New York, under the corporate name Saratoga Vichy Spring Company, for the purpose of bottling and selling mineral waters, such incorporation having taken place July 21, 1876; that, thereupon, in 1876, the defendant immediately entered upon the business of bottling and selling water from this Saratoga Vichy Spring, and has continued to botttle and sell it to the present time as Saratoga Vichy Water, and has acquired a valuable reputation for the water under such name, and at the time of the filing of the answer such names had been used for a period of over twenty-two years without

any objection on the part of the complainants, or any one else, (pp. 19, 20); that for more than fifty years mineral water has been sold throughout civilized countries of the world under the name of Vichy, and that such sale was prior to the business of the defendant, and has been recognized as lawful and permitted to be carried on openly and notoriously, so that the name Vichy has come to denote a type of water, to-wit: an alkaline, non-cathartic, carbonated water, and it does not stand for, nor exclusively denominate, water from any one spring in the world; that even in France it is lawful to sell mineral water, both natural and artificial, under the name Vichy, (p. 20); that the defendant has never sold water as and for the Vichy water of the complainants, nor in resemblance thereto, but that upon all its water there have been labels and marks, so that the purchaser should know that the goods sold by defendant were natural mineral water of Saratoga, and the name Saratoga has always appeared in connection with the name Vichy as designating the water, and has been as prominently displayed as the name Vichy, (p. 20); that the complainant Company, on the 7th of August, 1877, registered in the Patent Office of the United States, as its lawful trade-mark, a picture of a building, claiming exclusive ownership thereof, and that it cannot now be held to say that the Republic has any title or interest therein, (p. 21); that natural mineral water is bottled from springs not owned by the complainatns, in and near Vichy, and imported from France to this country, as Vichy water, to the knowledge of the complainants, and that, therefore, the complainants are not entitled to the sole use of the term

Vichy as applied to mineral waters, (p. 21); that the bottles and labels of the defendant are such that persons purchasing cannot be deceived into the belief that the water sold by one is the product of the other, (pp. 21-22).

It is then alleged that the cause of action set out in the bill did not accrue within twenty years and that it is,therefore,barred by lapse of time,and stale, and the court will not entertain the same, and that there is a misjoinder of parties plaintiff, the complainant Republic having no interest in the matter alleged in the bill of complaint, and that the complainants have an adequate remedy at law.

The allegation of the bill not otherwise met, are fully denied, and judgment is prayed dismissing the bill, (p. 22).

To this answer the complainants served a replication (p. 23), and, thereafter, upon stipulation and order, they were permitted to amend their bill by alleging that they were entitled to the exclusive use of the word Vichy, by reason of the treaty referred to in the original bill, which allegation the defendant denied, (p. 24).

In the record of the evidence taken in this action there is no particular conflict of fact, the facts being practically stipulated (pp. 27-30; 46-50), with the exception of a single purchase of water that was made by a clerk in the office of the counsel for the complainant, which was proved by oral testimony, (pp. 28, 29).

In addition, however, to the tetstimony given in this action and these stipulations, it was further stipulated that the evidence used in the action brought by the same complainants against Louisa

Schultz, executrix, might be offered (and it was offered) in evidence, and used as original evidence, (p. 29).

The record, therefore, contains up to page 102, the proceedings taken strictly in this case, and the remainder of the appeal book, except the writ of certiorari granted by this court (p. 463), is the record made in the Schultz case, which has all the force of evidence given in this case.

The action came on for argument before Judge Coxe sitting as Circuit Judge for the Northern District of New York, and on the 19th day of February, 1900, he handed down an opinion dismissing the bill in all particulars (pp. 103, 104), upon which judgment of dismissal was entered and for costs, (p. 104).

From this judgment thus dismissing the bill the complainants appealed to the Circuit Court of Appeals, for the Second Circuit, filing an assignment of errors, not necessary, perhaps, to specify here.

The appeal was argued at the Circuit Court of Appeals sitting in New York, in January, 1901, and in April of the same year a decision was handed down by a majority of the Court, holding that one neck label used by the defendant from the year 1896, was objectionable for the reason that the word Saratoga was not quite as prominently displayed thereon (i. e. that the letters thereof were not quite as large) as the word Vichy. This label appears on page 35 of the record. And the defendant was enjoined against the use of such label, or any label, in which the place of the origin of the water was not as plainly and prominently made known as the fact

that it was named Vichy. Direction was therefore made that the decree of the Circuit Court be reversed and the case remanded to enter a decree according to instructions, (p. 112).

Judge Wallace dissented from this conclusion of the majority of the court, and held that the decree dismissing the bill should be affirmed, (pp. 113-114).

Upon this decision an order was made that a mandate issue to the Circuit Court, (p. 114). This decree directed an accounting on the part of the defendant. Thereupon the defendant presented to the Circuit Court its petition, in which it set out the various formal steps in the case, and expressed its acquiesence in the decree, except wherein it was directed to account, and calling the attention of the court to the fact that an accounting had never been asked for in the court below, and it prayed a modification of the decree, by striking that provision therefrom, (pp. 114-118).

Upon this petition, which was opposed by the complainants, the decree was amended by striking out the provision for an accounting, and it is from the decree, thus amended, that the complainants have come into this court.

The complainants' testimony is to the effect that the French State, from a time some centuries prior to 1853 down to the present time, has been the owner of certain mineral springs located in the Commune of Vichy, named respectively Grande-Grille, Puits-Carre (or Chomel) Lucas, l'Hospital, the Parc and Celestins, etc. In 1853 the State leased these springs to the present Company, or its predecessors, for a stipulated fixed rental, which lease has con-

tinued down to the present time, and will not expire until the year 1934, (pp. 128-132-140-170), (complaint, pp. 3, 4).

These springs are protected by the State, by what is termed a perimeter of protection, which prevents the owners of ground within certain prescribed territory from making soundings, or other subterranean work, without an authorization of the administration, (p. 127).

There exist, however, other mineral springs at Vichy, not owned by the State, and which are worked commercially by the respective owners, viz: The Lardy, the Larbaud, worked by Compagnie Generale des Eaux Minerales et des Bains de Mer; the Prunelle, belonging to M. N. Larbaud and others. None of these springs have been declared of public interest, but are merely private ventures, upon ground owned by the respective owners of the springs, (pp. 128, 129, 146, 147, 295-297).

There exists also in France, but outside of the Commune Vichy, springs owned, bottled and sold by private individuals as Vichy waters, (pp. 295-297).

The name "Vichy Water" is applied indiscriminately as a generic term to all of the springs of the State, (p. 134).

Under the terms of its lease, the complainant, La Compagnie Fermiere, acquired the exclusive property in, and the use and enjoyment of, such State springs, subject to a fixed, stipulated, rental, (complaint, p. 3), (record, pp, 170-180).

The complainant, La Compagnie Fermiere, bottles and despatches its water, as well into France, as abroad, including the United States, and has done

so since the year 1855, under labels which are its property and not the property of the State, (pp. 139-140).

The complainants' bottle is of dark stained glass, about a foot high and about three and one-fourth inches in diameter at its base. The body of the bottle is about six inches high and tapers in its upper portion to form the neck.

The complainants' label is of white paper printed in black, about five and one-half inches wide, and wholly surrounds the body of the bottle, and is printed in the French language.

This is the only style of bottle and label ever used by the complainant, (p. 30).

Briefly stated this is the Complainants' case.

The defendant showed upon the trial the following facts, under a stipulation entered into by the parties, (pp. 46-50).

For a hundred years and over Saratoga Springs has been world famous as a watering place; there exists at that place numerous mineral springs generally known as waters of Saratoga, or Saratoga waters, but distinguished by individual names, such as Saratoga Congress, Saratoga Hathorn, Saratoga Vichy, etc. The word "Saratoga" in connection with mineral waters has become a generic name, denominating mineral water from Saratoga Springs, N. Y.

The spring of the defendant was discovered in March, 1872, on the farm of one E. A. Duell, in the Town of Saratoga Springs, N. Y. It was found by boring in the rock to the depth of 180 feet. At first, during development, the spring was called "Aetna."

Soon after its discovery the water of the spring

was analyzed by Prof. C. F. Chandler, of the Columbia College School of Mines, of New York City, who found in one U. S. gallon of 231 cubic inches, among other things, Bicarbonate of Soda, 82.873.

The Carbonic Acid Gas in one gallon, was 383.071 cubic inches.

The spring of defendant, when discovered, was a geyser, or spouting spring, throwing its water to a considerable height by the force of its own natural gas; thereafter, in 1873, the name was changed to "Saratoga Vichy Spouting Spring of Saratoga Springs, N. Y." and was extensively advertised throughout the United States.

The complainant has never sold its water in the United States in half pint bottles nor in pint bottles, until the year 1898, or about that time.

The water of the defendant is highly charged with natural carbonic acid gas, and is bottled under a high pressure, to such an amount that, on opening the bottle, the gas is apparent to the most careless person, while the water of the plaintiffs is known as a still water, that is, it has no gas at all, (for these facts *see* Stipulation, pp. 46-50).

On the 7th day of August, 1877, the complainant La Compagnie Fermiere registered in the United States Patent Office a trade-mark, in which it claimed as its own exclusive trade or property, the picture of some building; there was no claim on the part of the complainant, the Republic of France, to any title or interest therein, and no claim was made by anyone to the name "Vichy," (p. 407, and exhibit).

With these pleadings, and on these facts, the Circuit Court wholly dismissed the bill, which having

been, in all essential features, affirmed by the Circuit Court of Appeals, the complainants have come here for review.

The decree should be affirmed and the bill finally dismissed.

I

The defendant is not shown to have acted in bad faith, nor to have been guilty of any wrong, or unfair dealing; on the contrary, its acts have been characterized by scrupulous good faith during the entire quarter of a century that it did business,prior to the commencement of the action.

1" It has, in all its labels, and advertising, carefully distinguished itself by name, and its water from the water sold by the appellant company. In the record, from beginning to end, the Court will search in vain for any use of the word Vichy, where it is not preceded, and qualified, by the word Saratoga. Beginning with its label set out on page 13 of the record, where the two words are displayed in white letters on a dark background, the letters being exactly of the same size and style, taking the next one (saying nothing now of the neck label which will be discussed later) on page 15, and the others appearing at pages 31, 37, 39, 41, 53, 59, 61, 63, 69, 71, 73 and 75, which are the successive labels and circulars used by the defendant (pp. 27 and 28), each and every one of them uses this word Saratoga in a manner that cannot be overlooked, nor ignored. Not only has the defendant done this from the beginning, and voluntarily, but its every interest has been

to do so, since its fame and reputation and profit have come from the fact that it is a water from Saratoga, and such facts has constituted its chief claim to repute and virtue. Judge Wallace adverts to this in his dissenting opinion in the Circuit Court of Appeals, and it is true beyond question, (p. 113). It stands as literally true, that the defendant has been guilty of no deceit, neither towards the public, nor towards the complainants, but by uniformly proclaiming its water to be from Saratoga Springs, New York, has taken every possible precaution to prevent confusion between the products of the respective parties.

The name Saratoga Vichy makes no claim to being the Vichy imported from France.

Passing now the contention that the word Vichy has become a generic name, he only conclusion deducible from the words Saratoga Vichy, is that the water is from Saratoga, and has certain qualities like the Vichy, and it is certainly neither illegal, nor immoral to claim a likeness to, or superiority to, another article mentioned, but, on the other hand, is the fairest competition.

> Brown Chemical Co. v. Stearns, 37 Federal Rep., 360-362-363.

In reading from Gray's Elegy "Some Village Hampden," no one is deceived to believing that the author actually referred to John Hampden. It was some inhabitant who had, or might have had, qualities of courage and high mindedness like Hampden. The village Demosthenes has never meant other than the most eloquent boy of the place, and has

never confused the most simple, and so this name Saratoga Vichy, means, as stated, a mineral water from Saratoga, having certain characteristics like another water called Vichy.

The final test must be the likeliness of the name, or the package, to deceive the buying public; if not there is no occasion for interference.

Centaur Co. v. Marshall, 97 Fed. Rep., 785-90.

Fisher v. Blank, 138 N. Y., 244-252.

The Court of Appeals of New York very tersely states the proposition in the case last cited: "The "true test, we think, is whether the resemblance is "such that it is calculated to deceive, and does in "fact deceive the ordinary buyer, making his pur-"chases under the ordinary conditions which pre-"vail in the conduct of the particular traffic to "which the controversy relates."

And it is remarkable testimony to the fairness of the defendant that, in all the long years that it has used the name, not a single sale is shown where any purchaser desiring the complainant's water has ever been deceived into buying the defendant's, thinking he was getting his wish. The single sale shown in the record was where the first learned counsel for the complainants, now deceased, in anticipation of, and preparation for, this suit, sent his clerk to Acker, Merrall & Condit for two pint bottles of Vichy. The boy evidently knew what was expected, and did his duty. Saying nothing of the decoy nature of the transaction, which gives no color to the claim that any genuine buyer would be deceived, it is sufficient to say that the order was

for pint bottles, and was given in October, 1898, (pp. 28, 29), and it was not until that year (and possibly later than October) that the complainants ever sold any of its water in the United States, in pint bottles (p. 49), so that the only pints the boy could get were those put out by the defendant. Unless there is evidence of actual deception, relief will not be granted.

Jennings v. Johnson, 37 Fed. Rep, 364-365.

There are two instances where the word Saratoga has not been as large in size as the word Vichy; one a neck label appearing at pages 15, 35 and 73, which went into use in 1896, and a circular appearing at page 39, which had been in use prior to 1896, (p. 28). It was the use of this neck label, that the majority of the learned Circuit Court of Appeals decreed objectionable, and the use of which was forbidden (p. 112), to which direction the defendant has, of course, conformed. While it is not a question before this Court, because as to that label the complainants succeeded, and the defendant has taken no step to review the decision, the attention of the Court is called to the fact that the letters of the word Saratoga are at least three-eighths of an inch in length; that always under this neck label, on the same side of the bottle, appeared the main label, where the word Saratoga is full size with the word Vichy, and it is submitted that no intending purchaser, who could see at all, could fail to see the word Saratoga where it appears the smallest, whether the bottle was in his hand, or on a shelf, across a counter. Indeed, it may well be queried whether the word Saratoga is not the more plainly

visible, from the fact that, at the distances named, the eye can take it in more fully and clearly and quickly than the other word. For a label may be in small print, and still be equally conspicuous with larger.

Cohn v. Hoffman House, 7 Mis. Rep. (N. Y.), 461-462.

But the question is not here.

2" The bottles used by the defendant are not identical with those of the complainants, nor are their packages i. e. the combination of bottle and labels. It is true that every quart bottle must have some resemblance to every other quart bottle, notably in its capacity, but there is no deceiving similarity in those of the conflicting parties. The bottle used by the complainant company is one of dark green stained glass, (p. 5).

The first bottle of the defendant was adopted in 1873, and was of white glass, in the side of which was blown the words "Saratoga Vichy Spouting Spring, Saratoga, N. Y.," surrounding the letter V also blown in the glass. There were three sizes of this, quarts, pints and half pints. They were without label and were used until 1876, (p. 47), while the complainants bottles were always, and only, quarts (p. 30), until 1898.

In connection with this bottle, the defendant issued a circular, which, in itself, shows the entire good faith existing. It appears at page 53. After

giving the name, The Saratoga Vichy Spouting Spring, in prominent letters, and describing the location of the spring, and the manner of taking the water, it says: "This spring contains more soda and 'less salt than any other Saratoga water, and takes 'special rank at once among the valuable mineral "waters of this famous Spa, from its wonderful "similarity to the Vichy waters of France. It is the "only alkaline water found at Saratoga, and a "specific in those troublesome affections arising "from acidity of the stomach, dyspepsia, kidney and 'bladder difficulties; several remarkable cases "already on record of these diseases cured by its "use. This water contains more bicarbonate of 'soda, (82.873 grains) and is more highly impreg-"nated with carbonic acid gas, and more agreeable "to the taste than any other Saratoga Water. The "Saratoga is an excellent table water and superior "to the French Vichy" &c., &c.

A more frank, honest statement could not have been made.

In the year 1876, the defendant became incorporated under the laws of the State of New York, under the corporate name "The Saratoga Vichy Spring Company," the purposes of the corporation being stated to be "the production from the earth, "bottling and sale of mineral waters," (p. 55). It at once became the owner of the spring from which water is still taken, (p. 47).

In the same year the defendant's bottle was changed to amber glass, on the side of which was blown the words "Saratoga Vichy Water, Saratoga, N. Y.," and on the opposite side of the bottle, the letter V. The same three sizes as before were con-

tinued, and this style was used from 1876 to 1879, (pp. 47, 48).

During this period the defendant put out a circular. It is practically the same as the one of 1873, except as to the price list, and appears at page 59, (p. 48).

In the meantime, on the 16th day of March, 1877, the defendant registered its trade mark. It consisted "of a monogram composed of the letters V. S. "and the words The Saratoga, the latter being used "in connection with the words Natural Vichy "Water.....The class of merchandise to which "the trade mark is appropriated is natural mineral "waters, and the particular description of goods "(comprised in said class) upon which said corpo- "ration intends to use its said trade mark is natural "Saratoga Vichy Water." It appears at pages 64, 65 and 66, (p. 48).

From 1879 to 1888 the defendant put out a third circular practically the same as the first and second, displaying the word Saratoga as prominently as the word Vichy, and still calling attention to its superiority to the French Vichy. It appears at page 61, (p. 48).

In 1885 the defendant put out its first labeled bottle. It was of amber glass, with plain sides, with the letter S blown in the bottom. The label was white, printed in black and extended part way around the bottle. It appears at page 31, (p. 48).

A cursory inspection will show that this quart bottle of the defendant is shorter than the bottle of complainants, is a trifle larger in body and neck, and is amber in color, while the complainants' is dark green. The label extends but half way around

the bottle, with little printing, the most prominent words being "Saratoga Vichy Water," and is all in the English language. The complainants' label is in the French language, extends entirely around the bottle and has a large amount of printed matter covering it. These were used until 1887, (p. 48).

In 1888 a change was made in the label on these bottles, by which it was extended entirely around the bottle. With that exception, it was similar to the label of 1885, and contained all its dissimilarities to the bottle of the complainants. It appears at pages 13 and 67, and was used until 1896, (p. 48).

From 1888 to 1896 two other circulars were issued by the defendant, with all the characteristics of the prior ones. They appear at pages 69 and 71, (pp. 48, 49).

In 1896 the defendant again changed the style of its quart and pint bottle to a bottle of green glass, generally recognized as the Appollinaris bottle. This was without imprint of any kind. The quart is shorter than complainants' bottle, and is of light green glass, while that of the complainant is dark green, (*See* deft's. exhibit, fifth bottle, p. 49).

This style of bottle has been used continuously from the time of its adoption to the present time, and is the present style of bottle used by it, (p. 49).

In the same year the defendant adopted, in connection with this bottle, a body and neck label, the body label being oval shaped, and extenging about half way around the bottle. It was of white paper and printed in red and black characters. The neck label is of white paper, about four and one-half inches long, by about one and one-quarter inches

wide, with the name Saratoga Vichy printed in red and black letter. This label appears at page 73, (p. 49). This was the defendant's style of label until the order of the Circuit Court of Appeals, and any similarity to complainant's label will hardly be claimed.

3" The dissimilarity between the packages of the complainant and those of the defendant is further shown by the fact that the water of the complainants is still, without carbonic acid gas, while that of the defendant is highly, naturally, charged with it, and is bottled under a high pressure of such gas, so much so that on opening a bottle the gas is apparent to the most careless person.

All of which is stipulated by the complainants, (p. 50).

4" The defendant in adopting the word Vichy, in connection with its water, did not intend to defraud the complainants, nor to deceive the public; it has never sold its water as, or for, the Vichy water of the complainants, nor in resemblance thereto, but all its water has been, in proper manner, labeled and marked, so that the purchaser shall know that

the goods sold by the defendant is a natural mineral water of Saratoga, and not the water of the complainants. This testimony is without the slightest contradiction, in word or in deduction, and evidence of such intent was competent.

Pope v. Hart, 35 Barb. (N. Y.), 630-636-637.
Cortland v. Herkimer, 44 N. Y., 22-26.
Bayliss v. Cockroft, 81 N. Y., 363-371.
Davis v. Marvine, 160 N. Y., 269-276.
Lally v. Emery, 54 Hun (N. Y.), 517-520-521-522.

Moreover, upon all the defendant's bottles, brands, price lists and advertising matter, the name Saratoga, and other words designating the location of its spring and water, as of Saratoga, N. Y., has appeared in connection with the name Vichy, and the name Saratoga, has been as prominently displayed as the name Vichy, (pp. 49, 50).

In view of these facts the concluding sentence of Judge Coxe's opinion, in dismissing the bill, seems entirely appropriate: " An individual stupid enough ' to be deceived in such circumstances is beyond the " aid of a Court of Equity. In his case a writ *de* " *lunatico* is a more appropriate remedy than a writ " of injunction," (p. 80).

We may, therefore, approach the subsequent steps of the argument, in full reliance upon the fact of the good faith of the defendant, in all its acts here complained of, and the conclusion to be reached on this appeal, msut be reached with such full, good faith in mind.

II

The name "Vichy," in this country, has come to be a generic name, meaning an alkaline, carbonated water. The manufacture and sale of water under the name "Vichy" began as far back as 1863, and the business soon grew to such enormous proportions that it became, and is now, a matter of common knowledge, and all this, without protest of any kind from the complainant company, which had established agencies in this country.

Even in France the name Vichy is applied indiscriminately, as a generic term, to each of the springs at Vichy, those not owned by the Republic, and not leased by the complainant company, as well as those that are, (p. 134). And the generic character of the word "Vichy," and the right to bottle and sell mineral water under that name by proprietors of springs situated in France, but outside of Vichy, has been adjudged in the French courts, in a case decided in January, 1888, in a suit by the complainant herein "Compagnie Fermiere" etc., against another corporation, called Compagnie Proprietaire des eaux Minerales de Vichy. The judgment restrains unfair competition but specifically authorizes the use by the defendant of the terms "Water of Vichy" and "Natural Mineral Waters of Vichy" (pp. 440-452).

Browne on Trademarks (2" edition), Sec. 757, mentions this judgment of the French Court.

Aside from this adjudication, the testimony to this effect is overwhelming and conclusive.

The manufacture of artificial mineral water was first introduced in Germany by Struve in 1823 (pp. 264-266) Hermann Endemann, chemist, has been connected with several establishments for the manufacture of Vichy water (p. 268), and in 1888, was commissioned to make examination of the artificial Vichy waters as they were sold in New York (p. 264). The witness' personal knowledge of the manufacture of Vichy in this country goes back as far as 1867, when it was made by Carl H. Schultz, Dr. Hanbury Smith and John Matthews (p. 268). The witness knows of a dozen manufacturers of Vichy in New York City alone (p. 280). It was all labeled and sold as Vichy, in syphons and from soda fountains (p. 268). As far back as 1869 a person calling for Vichy water expected to get a very alkaline water, fit for neutralizing the acidity of the stomach (pp. 268-269). The witness further testified that Vichy water, other than the French, has been manufactured and sold continuously from 1867, down to the present time, and that it is used in New York and throughout the United States to a very considerable degree. It is not only kept in drug stores, but it is kept as a regular drink in nearly all bar rooms (p. 268).

The witness further testified that he is acquainted with natural mineral waters which employ the name Vichy in this country. He says: "Among the 'Saratoga Springs of the State of New York, the 'most alkaline water, that is, the water which con-'tains the largest amount of bicarbonate of soda, 'has on account of this fact been called Saratoga 'Vichy, in accordance with the ordinary under-

'standing that Vichy water means a very alkaline 'water."

This water, he says, has been bottled and sold in the market since 1871 or 1872 (pp. 269-270). The Reignier and Hauterieve Globe Springs are commonly known in the American market as Vichy water, and are so labeled (p. 272).

The various manufactured Vichy waters are all different, some like the French, and others away off (p. 281). The various French waters also differ widely in analysis (pp. 281, 411).

Bouche, Fils & Company of New York City, as agents of the complainant, have imported from the same concern in France, and sold in this country since 1880, not only the water of the complainant's but also the Reignier and Hauterieve, from private springs in France, but located outside of Vichy; such water being known as, and labeled, "Vichy" (pp. 295-297).

The witness, Dr. Augustus Caille, says that artificial Vichy has been sold in this country from his earliest recollection; that it was sold in New York City while he was there from 1868 to 1872, and that he made Vichy for his father in Iowa in 1873, and it was sold there as "Vichy," and was not called artificial (p. 309). He knew of a number of druggists who made their own Vichy at that time, and sold it as Vichy (p. 301). The word Vichy is generally understood to mean an artificial water (p. 301). In prescribing Vichy for patients he always uses the term, imported Vichy, when prescribing any of the Vichys from France (p. 302). As to the extent of the sale in the United States of Vichy waters other than that of the complain-

ants, he says that he has drunk it in most all parts of the country where he has been, south and west, and in Canada, and in Germany and Switzerland (p. 303). The witness knows of no other name than Vichy by which these waters could be called, to properly designate them (p. 303).

The witness, Charles A. Kinch, physician, testifies to the same effect, and that he has known and prescribed artificial Vichy since 1879 (pp. 303-305). He prescribed Vichy for its alkaline and carbonic effect, and in prescribing the French water, he terms it imported, and often names the spring (pp. 307-308).

Max Einhorn, physician, says the word "Vichy," as understood by the public, means the artificial Vichy sold by druggists. He has found it where he has traveled in the White Mountains, Washington, Baltimore, Philadelphia and Saratoga. In prescribing the French water, he uses the term imported (pp. 310-311). He says that among the lay-public by Vichy is simply meant a mineral water. He prescribed Vichy for its alkaline properties (p. 311).

Samuel J. Mettzer, physician, testifies to the same effect. Has known of the artificial Vichys as long as he has been practicing, fourteen years (p. 314). The usual understanding of his patients, when speaking of Vichy, is that it is some sort of mineral water (p. 315).

G. Langmann, physician, says that he has known artificial Vichy waters here for twenty-eight years (p. 316). Has prescribed the use of Vichy for his patients, and always supposed they got the artificial (p. 316-317). The witness says in answer to the

question could the name Vichy be expressed in any other way, not using the name Vichy, so as to convey the same meaning to the public. Answer—"I 'don't know if it could, because it has become a 'substantive that denotes a certain quality of exis-'tence as I might say a horse denotes a horse, 'and 'Vichy' denotes an alkaline water," (p. 320).

John P. Durfee, Jr., was manager for John Matthews of New York, manufacturer of soda fountains from 1832 to 1891 (p. 321). During the past seventeen years to his personal knowledge, and before, the concern manufactured, among others, Vichy water and sold it to the public and to druggists simply by the name "Vichy." The sale of Vichy water is large; the public demanded it in drug stores as Vichy (p. 322). It is sold throughout the United States. He says that when you call for Vichy you expect to get the artificial, because it is almost universal here to expect to receive artificial water, unless you call for natural water specifically, specifying the natural water. The same is true wherever the water is dispensed. It is the common custom of the people (p. 323-324). He says that there have been other manufacturers of Vichy in the city for many years, and that his firm never received any complaint from the Republic of France, or the Vichy Company (p. 324). The witness knew of no drug stores in New York where artificial Vichy was sold by any other name than simply "Vichy" (p. 326).

Martin Heldt, Jr., druggist, says he has known of the manufacture and sale of artificial Vichy water in this country for over twenty years (p. 329). People calling for the French Vichy, ask for

the imported (p. 329). No one ever asks for 'artificial Vichy," just "Vichy" (p. 331).

Charles Light, manufacturer of mineral waters for twenty-eight years, and Vichy for eighteen years, (p. 333) sells to drug stores, liquor stores, saloons and private. Syphons or bottles are marked just "Vichy" (p. 333). Never received any protest by the Vichy Company, or the French Republic, against selling artificial water under the name Vichy (p. 333).

George Gregorius, druggist in New York City for thirty-four years, has known of the manufacture of Vichy water since 1864, and has sold it all the time since then, under the name "Vichy" (p. 336).

Max Wustrow, pharmacist, has known manufactured Vichy for twenty-five years. It has alway· been sold to the public under the name Vichy. Witness has sold the Vichy of various manufacturers. People simply call for Vichy; when they want the imported, they ask for "imported," and then I inquire which spring, the Grande Grille, or Celestin, asking them to specify (p. 388). If a customer asked for "Vichy" I would understand that he wanted an alkaline water (p. 329).

John E. Ludin, manager for the New York Bottling Company for twenty-one years. Have manufactured Vichy water for twenty-one years. It has always been sold to the public by the name "Vichy," and the druggists sell it in the same way. Never been any protest from the Vichy Company, or the French Republic, against such manufacture or sale (pp. 339-340). The people ask for Vichy, and we sell them the artificial. The name Vichy was

given to the water for the reason, in the first place, that the practice has been followed by the trade since a good many years, since as far as I can recollect, probably thirty-five years. It is a carbonated, alkaline water (p. 341). The witness further says: Now there is no such thing as a Vichy water, any more than you would say there is a Saratoga water. If you go to Saratoga there are probably a dozen different springs, and any of them are Saratoga water. There are five prominent springs in Vichy which doctors recommend. The Grande Grille, Celestins and Elizabeth, the doctors recommend for drinking purposes, and the others are generally used for bathing purposes, and when we get special orders from certain customers for Vichy Water, imported, they generally give the name of the Vichy. Then they specify, and it is generally at the recommendation of a doctor. Now Vichy does not mean anything; it is a very vague name. Vichy is the name of a locality in France, in which there are various springs (pp. 340-341). The natural water is always specified and called for, either by specific name, or pointing out what is demanded (p. 342) He says also that there must be at least two hundred manufacturers of mineral water in New York City who make artificial Vichy, but he does not believe there are more than three who imitate any spring. The others make a water, principally bi-carbonate of soda, carbonated so as to be sparkling (p. 342). We imitate the Grande Grille and could call it that, but do not, simply call it Vichy, for an alkaline water (p. 343). Witness knows of the manufacture of artificial mineral waters by Dr. Struve in Europe. Was in his establishment in

Dresden, Frankfort and Berlin (p. 345). Struve is considered the father of the mineral water industry in Europe. He commenced in 1840 (p. 346). Witness also visited every mineral water establishment in Berlin, Hamburg, Dresden, Bremen, Frankfort, Lyons, Paris and London. In London they manufacture mineral waters and put them up in bottles, and the same way in Germany, with a label to indicate which spring is imitated. I consider that we have done more to build up the reputation of Vichy than anything they have done. They never advertised the water as extensively as we have advertised it (p. 347).

George Kleinan, druggist, has known of the manufacture and sale of Vichy for fifteen years, and sells it under the name Vichy. They generally call for Vichy, and we give them the artificial. It is the custom of other druggists I believe. I sell it also from a soda fountain. I also sell the imported Vichy. It is demanded as "Imported Vichy," and the name of the spring is given (p. 348).

Peter Rankin, manager for Carl H. Schulz since 1867, manufacturer of mineral waters, twenty-two years in all, including Vichy, (pp. 349-350) of which the output of Vichy alone is about a million syphons a year (p. 350). It is ordered as Vichy, and as Vichy it is commonly spoken of and demanded by the public, and prescribed by physicians (p. 351). The concern has over 700 physicians who drink it in their own families. The word Vichy as applied to a mineral water is supposed to be water charged with gas, containing somewhat an excess of soda (p. 354).

Henry S. Webster, druggist, says that the word Vichy as applied to an artificial water is more common than the word Seltzer applied to another artificial water, and there is more Vichy drank (p. 357).

William E. Crane, druggist for thirty years, and during that time has known of manufactured Vichy and it is commonly known by the name Vichy and demanded and sold as such (p. 359) The imported Vichy is always specified as imported, when demanded by the public. Witness has never heard it asked for in any other way than imported Vichy. The witness further says that there are but two natural Vichy waters that he ever saw That he has known Saratoga Vichy between five and ten years, and that it is always demanded as "Saratoga Vichy" (p. 361). The word Vichy is more common than the name Seltzer, and is asked for oftener (p. 361).

Henry Schmidt, pharmacist and physician. Has known of the manufacture of artificial Vichy for twenty-six years. It was always labeled and known as Vichy (p. 361). Never in twenty-three years did any customer complain of receiving artificial Vichy, when calling for Vichy (p. 362).

Joseph Weber, pharmacist, for the past thirty-five or forty years, and has sold artificial Vichy ever since he was in business in New York for himself since 1867. The imported Vichy is always demanded as "Imported Vichy." "A bottle of imported Vichy." Unless a customer demands specifically the imported Vichy I would assume that he wants the artificial, and that has been the common practice all these years (p. 364).

Peter Haykendorf, druggist since 1864. Has

known of artificial Vichy as long as he has been in the drug business. It was always recognized as a legitimate business to manufacture and sell it (p. 365). It was simply sold under the name of Vichy. From 1864 to 1872 I was in the drug business in Denmark, and artificial Vichy was sold there (p. 365). Has sold the Vichy waters of various establishments (p. 366). Also sells the imported, which is asked for as the imported generally. The word Vichy has become a general term for a carbonated, alkaline water, as Seltzer means an artificial water, slightly salted (p. 367).

Thomas Latham, druggist about twenty-eight years. Has known of the manufacture and sale of Vichy since 1870. Sell it myself as Vichy. Sell the imported Vichy also. It is usually prescribed by physicians as imported Vichy, giving the name of the particular spring that is desired (p. 368).

Charles L. Finch, druggist, in business thirty-five years and for myself eighteen years (p. 369). Have been acquainted with the sale of artificial Vichy for twenty-eight years and have sold it myself (p. 370). I also sell the imported Vichy. Customers who want the imported Vichy always specify it as imported, or in some other way different from the ordinary syphon, or bottled Vichy, as asking for the special spring (p. 370). Any druggist having a fountain can make an artificial Vichy himself. I know it is done (p. 371). The fountains are labeled simply "Vichy" (p. 372).

Henry A. Cassebeer, apothecary since 1860, has known artificial Vichy ever since that time. Has sold it and still sells it. Nearly every mineral water manufacturer makes it. My father first made some

in 1860, (pp. 372-373). In 1861, syphons and a formula written in French were sent over from Paris, and the man who had them sent over wanted my father to go into business with him. Shortly after that, Schultz and Walker started their factory for making artificial waters in syphons, and ever since that date the trade has increased, and increased in size, (p. 373). When a man comes and asks for natural Vichy I always ask him what kind. I believe there are four or five different sources, (p. 374). The proportion of Vichy sold is about-one-half of one per cent. of natural, to ninety-nine and one-half per cent. of artificial, (p. 375). The name "Vichy" in the United States, as applied to mineral water, means an alkaline, aerated water, or carbonated water, (p. 375). In selling artificial Vichy, I take no account of the spring imitated, just deal in it indescriminately as Vichy, but with the natural mineral water it is different, (p. 377). Vichy is more or less of a generic name in the trade. When they call for a Vichy water they mean an alkaline water, charged with carbonic acid gas. The people like to drink a water that is bubbly, that is a little alkaline and that contains carbonic acid. The name Vichy was adopted because the Vichy spring contains an alkali, and the people need some kind of corrective for their stomachs, (p. 378). I don't think the manufacturers appropriated the name Vichy for the purpose of giving to the artificial water the reputation of Vichy water, because they had no reputation here in America at that time. There was no reputation to take in America, (p. 379). I don't think the first manufacturer ever knew where the Vichy spring was, but Mr. Schultz

was an intelligent man and he knew and might have done that, (p. 379).

Henry J. Smith, bar-keeper at the Astor House. Has been a bar-keeper for thirty-five years, ten years at the Astor House, ten years at the St. James and five years at the Metropolitan Hotel on Broadway, New York, (p. 380). Has sold syphon Vichy since about 1863 or 1864, during the latter part of the war, when it first came out. Sold it over the bar right along ever since. If persons want French Vichy they ask for it; but one who drinks syphon Vichy, an ordinary drink of Vichy; if I were to give them French Vichy they would not take it, they would call it dead; it is still, it is not charged, (p. 381). We don't sell a dozen bottles of French Vichy a year, but of Syphon Vichy, seltzer and carbonic water I use a hundred a day, may be. A great many mixed drinks are made with seltzer or Vichy. You cannot use French Vichy,or German Seltzer,for that because there is no gas in the water, (p. 382). When persons demand the imported Vichy at the bar, they always ask for the imported, or French, Vichy. That has always been the case since 1864 or 1865, (p. 382).

Emil Roho, steward New York Riding Club for five years and before that, cook at Delmonico's and other places. Has sold the artificial Vichy. It is demanded as just 'Vichy," (p. 384).

Otto Brandt, manufacturer of mineral spring waters since 1867, in Newark. Has manufactured artificial Vichy since 1867 and sold it in syphons labeled "Vichy Water," or only "Vichy" and my name and address. That is the usual practice of manufacturers of Vichy water in this country,

and, it is sold in that way to the public, (p. 385). When I commenced to manufacture, I did not know we had imported Vichy in the market. Did not know it until some three years ago, (p. 386).

William Schmidt, bartender, Stevens house. Has sold mineral water for forty years. Has known Vichy water ever since he has been in business. Don't recollect ever seeing imported Vichy, (pp. 388-389).

Dr. Enno Sander of St. Louis, Mo., manufacturing chemist for over forty years, during all of which time he has manufactrued Vichy water in the City of St. Louis, and sold it in syphons and bottles, (p. 402). My Vichy was put on the market as my product,highly carbonated,in half pint and pint bottles, distinguished by my label from any other Vichy. My knowledge of the manufacture of Vichy in European countries has been obtained mainly from the publications of Struve and Soltman, who conducted large plants for the manufacture of artificial mineral waters all over Germany, Russia and England, over fifty years ago and produced Vichy for sale ,(p. 403). The word "Vichy" in this country means simply an alkaline water, (p. 404).

The foregoing testimony is followed by extracts from numerous publications all proving the widely disseminated manufacture of Vichy water throughout this and European countries, and the generic meaning of the name "Vichy."

In view of this testimony and the common understanding that this Court itself must have on the subject, it is submitted that the word "Vichy" has become, and is, a generic name, signifying an alkaline, carbonated water.

Websters International Dictionary, under name Vichy water, points the some result: "A mineral "water found at Vichy, France.

"Also by extension any artificial or natural water "resembling in composition the Vichy water "proper, called also, colloquially Vichy."

Dunglison's Medical Dictionary (1874) defines Vichy water as made of simple, acidulous water, impregnated with twice its bulk of carbonic acid gas.

The word Vichy having thus become a generic name, with the significance stated, the complainants cannot be heard to claim that they have any trade-mark, or trade name, therein, or any right to legal protection in the exclusive use of it, for a generic name, one merely descriptive of an article, of its qualities, ingredients, or characteristics, cannot be employed as a trade-mark.

Canal Co. v. Clark, 13 Wallace, 311-323.

Judge Brown states the rule thus in Burton v. Stratton, 12 Fed. Rep. 696-701-3: "The only satisfactory rule we have been able to gather from the "authorities is that, in each case, it is a matter for "the court to determine, not alone from the mark "itself, but from the testimony, whether the words "have become so well known as to stand in the public eye as denoting the character and quality of "the article, and not its origin, or ownership. Thus, "if it should appear that the article had been manufactured and sold by a number of dealers under a "particular name, this would be decisive that the "plaintiff had no right to the exclusive use of that "name. Most, if not all, of these generic names

"were at first indicative of the origin, but finally, "by constant use, ceased to subserve that purpose "and have become indicative of the quality. An "example of this is 'Fowler's Solution of Arsenic' "which clearly indicates origin, but the article is "nevertheless put up by druggists all over the coun- "try, and this name has become public property. "We think that most, if not all, the cases upon this "subject, when carefully examined, will be found "to have turned upon the extent to which the name "is used, rather than upon the name itself."

In Hostetter v. Fries, 17 Fed. Rep., 620-2, Judge Wallace says that a name alone is not a trade-mark when it is understood to signify, not the particular manufacture of a certain proprietor, but the kind or description of the thing which is manufactured.

To the same effect are

Air Brush Mfg. Co. v. Thayer, 84 Fed. Rep., 640-1.

Brown Chemical Co. v. Sterns, 37 Fed. Rep., 360-1.

Clotworthy v. Schepp, 42 Fed. Rep., 62-3.

Columbia Mill Co. v. Alcorn, 150 U. S., 460-3 *et seq.*

Corbin v. Gould, 133 U. S., 308-314.

Sterling Remedy Co., v. Gorey, 110 Fed. Rep., 372-3.

Vitascope Co. v. U. S. Phonograph Co., 83 Fed. Rep., 30-1-2.

N. Y. Asbestos Mfg. Co. v. Ambler Asbestos &c., 99 Fed. Rep., 85.

See too the latest utterance of the Court of Appeals (N. Y.) on the subject, decided in October, 1903.

Barrett Chemical Co. v. Stern, 176 N. Y., 27-30.

III

The complainants were guilty of laches in seeking a vindication of their rights, and the decree of dismissal should be affirmed for that reason.

The subpoena was issued on the 27" day of June, 1898, and was served presently thereafter, (p. 103).

The defendant's spring was discovered in March, 1872, (p. 46). The word Vichy was applied to it in 1873, in the title " Saratoga Vichy Spouting Spring of Saratoga Springs, N. Y.," and it was extensively advertised throughout the United States, (p. 47). On the 21" day of July, 1876, the defendant was incorporated as " The Saratoga Vichy Spring Company," (p. 47 and 55).

March 16, 1877, the defendant registered its trade mark (p. 48), repeatedly using the word Vichy in its statement, (pp. 61, 62 and 63). On every bottle, label and circular issued since 1873, has been prominently displayed this word Vichy, (in connection with the word Saratoga). So that, when the bill was filed in June, 1898, the defendant had been openly, with the widest publicity, using the offensive designation, a few weeks more than a quarter of century.

It was not done in a corner. Secrecy would have defeated success in the defendant's business. Publicity was essential, and the utmost effort was put forth to obtain it. Not only were bottle and label and circular widely distributed, but the name was

recorded in the office of the Secretary of State at Albany, and filed with the proper office in Washington, open to all the world, and such recording and filing were solemn evidences of the intention of the defendant to build up its business around this name. Under these circumstances, the Courts, for laches a very much less time than here shown, have repeatedly denied relief. Recovery, either of damages, or the obtaining of injunctive relief, in such case, would violate the principle of every statute of limitation, or repose, which every civilized state deems an essential part of its jurisprudence.

The most patent reason for refusing relief under such circumstances, is that the complainant has stood by, and permitted the defendant to build up a business, and establish a good will that has become valuable, so that the granting of present relief would wreck, and absorb to the complainants, a business, which it has permitted to become valuable, without complaint, and this is intolerable. If the complainants, here have allowed the defendant to build up a profitable business, on every fair principle, it should be estopped from wrecking it.

To allow them to do so would give them a dishonest, and unconscientious, advantage, as the fruits of their own wrong and negligence, and the rule has always been that improper delay in applying for relief, or laches in the enforcement of his rights, causes a party to forfeit his rights to relief by injunction.

And so in Amoskeag Manufacturing Co. v. Garner, 55 Barb (N. Y.), 151, where it was sought to

restrain the use of the word Amoskeag, relief by way of injunction was denied because of a delay of nine years.

In Leggett v. Standard Oil Co., 149 U. S., 287-294, which was an equitable action, this Court held that a delay of fourteen, or fifteen, years showed such laches as would clearly preclude any right to relief, citing, among other cases, McLean v. Fleming, 96 U. S., 245.

In Sullivan v. P. & K. R. R. Co., 94 U. S., 806-11-12, this court quotes from Smith v. Clay, Ambler, 645, the following language: "A court of equity "which is never active in giving relief against con- "science, or public convenience, has always refused "its aid to stale demands, where a party has slept "upon his rights, and acquiesced for a great length "of time. Nothing can call forth this court into "activity but conscience, good faith and reasonable "diligence. Where these are wanting, the court is "passive and does nothing. Laches and neglect "are always discountenanced; and, therefore, "from the beginning of its jurisdiction, there was "always a limitation to suits in this court."

The delay in the case cited was seven years.

In McKnight v. Taylor, I How., 161-167-168, Chief Justice Taney writing, this court reached the same result, in a case of a delay of nineteen years.

In Godden v. Kimmell, 99 U. S., 201-210-211- 212, Justice Clifford, writing for the court, says that eqiuty courts, in cases of concurrent jurisdiction, usually consider themselves bound by the statute of limitations which governs courts of law in like cases, and in many other cases act upon the analogy

of the statutory limitations at law, and that support to these propositions is found everywhere; that courts of equity in such cases often act upon their own inherent doctrine of discouraging, for the peace of society, antiquated demands, by refusing to interfere, where there has been gross laches in prosecuting the claim, or any acquiesence in the assertion of adverse rights.

In Brown v. Beuna Vista, 95 U. S., 157-161, Justice Swayne says, that laches and neglect are invariably discountenanced in equity, and, therefore, there has always been a limitation of suits in such courts, from the beginning of their jurisdiction, and that limitations of the kind are dictated by experience, and are founded upon a salutary policy, as the lapse of time carries with it the memory and life of witnesses, the muniments of evidence, and the other means of judicial proof.

In Lewis v. Chapman, 3 Beav., 133, the Master of the Rolls refused an injunction to restrain the infringement of a copyright, solely on the ground of a delay of six and one-half years.

In Landsdale v. Smith, 106 U. S., 391-2, a delay of forty-five years was held fatal on demurrer.

And this court in the Saxlehner case, 179 U. S., 19-35, reaffirmed the doctrine that a party, seeking to enjoin the use of the name Hunyadi was bound to use reasonable promptness.

In McLaughlin v. Peoples Ry. Co., 21 Fed. Rep., 574, Justice Brewer held that a delay of thirteen years in instituting a bill for the infringement of a patent, made the bill bad on demurrer.

The complainants have much exploited upon their brief filed here, the case of McLean v. Fleming,

96 U. S., 245, where in a case where there had been long delay, this court upheld a decree of the Circuit Court for the District of Missouri, enjoining an infringement of a trade-mark while denying an accounting. The case is an extreme one, and if not opposed by the great bulk of the decisions of this court on the subject, it certainly goes further.

Although the delay had been about twenty years (p 254-5), the court found that the defendant had deliberately intended to infringe the rights of the complainant — a finding that cannot be reached here.

In McIntyre v. Pryor, 173 U. S., 38, the court recognizes the difference between cases where actual fraud exists, as in the McLean case, and where it is lacking, as here. Where fraud does exist the principle of laches has but an imperfect application, and delay, even greater than that permitted by the statute of limitations, is not fatal to plaintiff's claim.

We have only to refer to the cases analyzed in that opinion for this distinguishing principle that, where actual fraud is proven, the court will look with much indulgence upon the circumstances tending to excuse the plaintiff from a prompt assertion of his rights. Indeed in cases of active and continuing fraud, they are satisfied with no evidence of laches that does not amount to proof of assent, or acquiescence.

As actual fraud existed in the McLean case, and as there is no ground for claim that it exists here, the distinction between that case, and the one at bar, is clear and striking, and decisive.

There is this further distinction between the case at bar, and this case of McLean, in that in the McLean case there was nothing set up in the answer, charging the complainants with laches (96 U. S., 256), while here the defense is distinctly pleaded, (p 22).

Under such circumstances and with such distinctions existing, the McLean case will not be regarded as controlling here.

IV

But the complainants seek to escape from this rule, which most effectually meets their demand for relief, by the claim that because the French Republic, one of the world's sovereign powers, is a ccomplainant here, there is no prescription, and that laches cannot be predicated upon any lapse of time. The claim is based upon the well understood doctrine that the governing power, whether People, or States, or King, or whoever it may be, is so engaged in the public business, in the affairs of State, that it is against public policy that laches should be imputed to a sovereign complainant.

The principle has no application here.

1" However much courts will hold themselves bound to hear complaints of their own sovereign power, for the reasons stated, there is nothing requiring, or making it obligatory to comity, that they should so hold with respect to foreign powers. It is a matter of no concern to our courts, to indulge in the fiction that the government of France since 1873 has been so busily engaged in the public business of the French people, that it could not attend to the vindication of its private rights.

When a foreign government comes into our courts, it stands, and must stand, on the precise plane of a private litigant. No public policy demands anything different, and a holding as asked by the appellants would be well nigh intolerable. The reason of the rule is that the subject must yield his convenience, and, if necessary, his rights, for the common good in the maintenance of the government that affords him security and protection. But there is no reason why he must thus yield, either his rights, or his convenience, for the benefit of a government that does not afford him protection, and to which he swears no allegiance, and the reason ceasing, the rule must cease.

2" But, passing any reasoning on the subject, the treaty between the French Republic and the United States, requires the same result.

The amendment to the bill of the complainants

alleges that, by virtue of the treaty between the United States and the government of France, concluded at Paris on the 20th of March, 1883, and proclaimed by the President of the United States on the 11th day of June, 1887, they are entitled to be protected in the exclusive use of the word "Vichy" as a trade name; and as a commercial name, and otherwise, and Article VIII of that treaty is set out in the following language: "The "commercial name shall be protected in all the "countries of the Union, without obligation of "edopist, whether it forms part, or not, of a trade, "or commercial, mark," (page 24). This treaty is known as the Industrial Property Treaty, *See* Compilation of Treaties in force (edition 1899), page 684.

Article two of that treaty is in the following language: "The subjects, or citizens, of each of the "contracting States shall enjoy, in all the other "States of the Union, so far as concerns patents "for inventions, trade, or commercial, marks, and "the commercial name, the advantages that the "respective laws thereof at present accord, or shall "afterwards accord to subjects or citizens. In con-"sequence they shall have the same protection as "these latter, and the same legal recourse against "all infringements of their rights, under reserve "of complying with the formalities and conditions "imposed upon subjects or citizens by the domestic "legislation of each State." Whatever rights, therefore, might be argued for the Republic of France, as a sovereign State, under the maxim *nullum tempus occurit regi,* had there been no convention on the subject, it stands that, under this

treaty, one of two things is true: either the French Republic has no standing in Court whatever, because it does not come strictly within the terms "subjects or citizens" of the contracting States, or, if it shall be held to come within the spirit of the treaty, and of this language: "The subjects or "citizens of each of the contracting States shall "enjoy, &c.," then it comes into our Courts as the treaty provides, and with no other, or greatr, rights than a subject or citizen of the country, or of any of the countries represented in the convention where this treaty of 1883 was adopted, and, such being the case, it cannot be heard to say that laches is not imputable to it, precisely as to a private person. In other words, concede all that is claimed by the appellants, and that laches cannot be imputed to a sovereign power, even to a foreign one coming into our courts in the absence of any convention on the subject, it yet was competent for the French Republic, or any other sovereign ,to waive any such prerogative possessed by it, and to agree that, in coming into our courts, it should possess only the same rights, and be governed by the same rules, that subjects and citizens of each of the contracting parties could enjoy, and this was certainly done in the most unmistakeable language; and it must be assumed that for thus surrendering a privilege it would, perhaps, otherwise have had, it received some compensatory benefit, in some other clause of the Treaty.

Moreover, no rights can be held to accrue to the complainants under the eighth article of this treaty for the reason that when

it was proclaimed by the President, in 1887, and became effective, the defendant had then already been using the name "Vichy" for fourteen years; and the terms of the treaty could have no retroactive effect upon the rights of the defendant. The defendant was already the owner of valuable rights in the word Vichy and no treaty, nor proclamation thereof, could take them away, and any attempt to do so would find itself in direct conflict with the provisions of the Constitution.

3" But the French Republic has no interest in the controversy here, is not a proper party to the record, and her presence on the record, without interest and without right, cannot be heard to save the case, in which only the appellant company has any interest, from the result of the laches existing here.

The allegation of the bill is that in the year 1853 the predecessor of the French and in the month of June in that year, in consideration of a stated rental, or tribute, duly leased to a co-partnership, the predecessor in title of the complainant Company, the exclusive right and privilege of operating these springs at Vichy, and all the rights and privileges thereunto belonging, including the exclusive right and privilege of taking the waters from the springs and the preparation and sale thereof in bottles, for the term of thirty-three years from June 10, 1853, (*See* 11th

paragraph of the Bill, pages 3 and 4). In the twelfth and thirteenth paragraphs, page 4, it is alleged that this lease has come to the appellant Company as owner, and that it has been extended so that it will continue under existing conditions until the year 1934.

We have then this state of facts: an owner has leased his premises to a tenant for a fixed sum, a sum which is not affected by the success or failure of the business of the tenant. During the existence of this lease, certain things have occurred which, it is alleged, have done harm to the business of bottling and selling the water taken from such leased premises, by imitating a trade-mark owned exclusively by the lessee. There is no allegation, as there is no proof, that the acts complained of do any harm to the realty, directly or indirectly, or that it will be less valuable than it otherwise would have been, when it shall again revert to the owner, at the expiration of the lease. And, on this state of facts, this Court is asked to hold that the lessor, the owner, is a necessary party to an action brought for an injury done solely to the business and property of the tenant; and, having held that it is such necessary party, it further asked to hold that its presence — it being a sovereign power — will save the case from the condemnation that otherwise would be visited upon it, because of unmistakeable, and undisputed, laches. The Republic has adopted no trade-mark, has acquired no trade name, or commercial name, is an entire stranger in law to the business carried on by the Company, and can neither be benefitted by its success, nor damnified by its failure. Under such circumstances it is sub-

mitted that no possible reason exists in either allegation or proof, for making, or keeping, the Republic a party.

The rule is illustrated by the case of Kernochan v. N. Y. Elevated R. R. Co., 128 N. Y., 559, 566, 568. That was an action brought by the plaintiff for damages sustained by reason of the construction of the elevated railway, and the question for decision, as stated by Judge Andrews (page 562), was, whether the owner of premises in the City of New York, who, after the construction of the elevated railroad in the street upon which the premises abutted, leased them for a term of years, could maintain an action for damages for the impairment of easements in the street appurtenant to his premises, by the existence and maintenance of the road, suffered during the period in which the premises were in the actual occupation of tenants under the lease, or whether the right of action is in the lessee. It was held that under such circumstances the lessor could recover, upon the thoroughly sound reasoning that the lease having been made after the damages had accrued, it was patent that the reserved rental was fixed with the damage in mind, but that (page 568) "in "a case where the lease was made prior to the con- "struction of the road different consideration "would apply. Under such a lease the lessee is "the party who would be entitled to maintain an "action, for the same reason that we hold the lessor "is entitled in the present case, viz: that he suffers "the injury."

The learned counsel for the complainants seeks to distinguish the case cited from the one at bar,

but the analogy between the two is complete. The Republic here is the owner of the fee of the realty upon which the springs are situated, precisely as was Kernochan in the case cited. The Company here is the lessee of the realty, precisely as there was a lessee in the case cited, and it is the lessee alone who, the Court held, was entitled to recover for damages accruing after the lease was given.

It may be urged that in the Kernochan case, the damage was to real estate, and so the cases are different; but real estate is all that the Republic owns here. It owns neither bottles, trade-mark, trade name, nor business, nor has any interest therein.

Conceding now everything said by the complainants here as to the damage done by the defendant to the bottling and sale of water which comes from the land owned by the French Republic, and leased by the complainant Company, as such damage was claimed to exist in the year 1898, when the bill was filed, or in this year 1903, when this appeal is being argued, what reason is there to believe that when the leased premises shall revert to the French Republic at the expiration of the lease, they will be any less valuable, by reason of anything done by the defendant here, than they would have been had the defendant never discovered its spring? If there is any possible effect that could be imagined, the court certainly will not indulge in speculation on the subject, in default of allegation in the bill, and proofs in the case. The complainants have tendered no such issue, and the defendant has offered no evidence on the subject, and the court

cannot, in the absence of both allegation and proof, pass on the question.

The complainant the French Republic thus having no interest in the subject matter of the suit, the action is not saved from all the results that follow from the inexcusable laches shown here. Even if the Republic of France were correctly on the record as a nominal party, for the benefit of the complainant company, and to enable it to vindicate its rights, such presence on the record, in nominal capacity, would not save any rights to the complainant company, that it would not have had in its own name, as the controversy would be regarded, in such case, as it really would be, between the private litigants, and where such is the case, the rules in controversies between private individuals, will be applied.

State of Maryland v. Baldwin, 112 U. S., 490-1.

U. S. v. Beebe, 127 U. S., 338-346-7.

Justice Lamar, in writing for the Court in the case last cited, says: "The mere use of its (United States) name, in a suit for the benefit of a private "suitor, cannot extend its immunity as a sovereign "government to such private suitor, whereby he "can avoid and escape the scrutiny of a court of "equity, into the matters pleaded against him by 'the other party; nor stop the court from examining "into, and deciding, the case according to the prin- "ciples governing courts of equity, in like cases "between private litigants."

The action, from the opinion in which quotation is made, was brought by the United States to cancel

certain land patents that had been given to one Beebe, on the ground that, when the patents were issued, the lands were owned by other persons. Because the action was really for the benefit of the owners of the land, although brought in the name of the United States, the bill was dismissed for laches.

The appellants seek to answer this position, and to save their joinder of the Republic by citing a large number of cases (page 40, appellants' brief), holding that it is proper to unite the patentee and licensee, in an action to restrain an infringement of a patent.

There is no analogy between the cases. A patentee granting a license, even an exclusive one, does not divest himself of the title to the patent, the thing injured, and has his direct interest to see that for an injury to his property, he is recompensed in damages, or protected by injunction.

In the case of Waterman v. Mackenzie, 138 U. S., 252-255, Justice Gray clearly sets out the distinction between cases where a patentee must be joined, and those where he cannot. "The patentee, or is "his assigns, may, by instrument in writing, assign, "grant and convey, either, 1" the whole patent, "comprising the exclusive right to make, use and "vend the invention, throughout the United "States; or 2" an undivided part or share of that "exclusive right; or 3" the exclusive right under "the patent within and throughout a specified part "of the United States, Rev. Stat. Sec. 4898. A "transfer of either of these three kinds of interests "is an assignment, properly speaking, and vests "in the assignee a title in so much of the patent

"itself, with a right to sue infringers; in the sec-
"ond case, jointly with the assignor; in the first
"and third cases, in the name of the assignee alone.
"Any assignment or transfer, short of one of these,
"is a mere license, giving the licensee, no title in
"the patent, and no right to sue at law, in his own
"name for an infringement."

The language of the learned justice is simply equivalent to saying that the party having the interest to be protected must maintain the action. If an assignee has obtained the whole title, he must bring suit; if the patentee and assignee have a joint interest, both must sue; if there is outstanding a mere license from the patentee, the patentee, the owner, must vindicate right.

Not only is there, in all this, no warrant for joining as complainant, a lessor, who owns only real estate, which is not injured by the acts complained of, and which is not claimed to be injured, and who has no title nor interest in the property that is injured, the trade-mark or trade name, but it expressly shows that such joinder cannot be had.

If the lease of the Republic to the complainant company, reserved as rental, a percentage of the profits made by the company, a joinder might be proper, but that is not the case. The rental is a fixed sum — as alleged in the eleventh paragraph of the bill, a stated rental, or tribute, (page 3).

If this reasoning is correct it follows, not only that the presence of the Republic, as a complainant on the record cannot save the application of the rule as to laches, but it has no interest in the controversy, and should have been dismissed.

V

The name Vichy is a geographical name, as is alleged in the bill, and as is shown by the proof, and as such geographical name the complainants have no right to insist on its exclusive use as a trade-name.

Canal Co. v. Clarke, 13 Wallace, 311, 324.
Columbia Mill Co. v. Alcorn, 150 U. S., 460-3 *et seq.*

The case last cited treats the subject exhaustively and in his opinion Judge Jackson cites the case of Koehler v. Sanders, 122 N. Y., 65, which held that the word "International" could not be used as a trade name; Connell v. Reed, 128 Mass., 477, that "East Indian" could not be so used; Glendon v. Uhler, 75 Pa. St., 467, holding that where one company had adopted the word Glendon, after which a borough was created by the name of Glendon, and a second company then stamped its product as Glendon, that it had a right to do so; Amoskeag Mfg. Co. v. Spier, 2 Sandf., 599, which holds that no one has a right to appropriate a sign or symbol which, from the nature of the fact it is used to signify, others may employ with equal truth.

See too Barrett Chemical Co. v. Stern, 176 N. Y., 27-30.
Levy v. Waitt, 61 Fed. Rep., 1008.
Ill. Watch Co. v. Elgin Watch Co., 94 Fed. Rep., 667.
Hoyt v. Lovett, 71 Fed. Rep., 173.
Republic v. Schultz, 94 Fed. Rep., 500.
Luyntes v. Hollander, 30 Fed. Rep., 623.

VI

The complainant company, on the 7th of August, 1877, registered its trade-mark in the patent office (p. 407). In the statement filed it is claimed that the trade-mark consists of an oval medallion, within which a perspective view of the buildings of the Thermal establishment of Vichy is represented, and also a scroll, or band, above the buildings bearing the words, "Establissement Thermal de Vichy, Ouvert Toute l'Annee."

The essential feature of the trade-mark was said to be the oval medallion with the representation of the Thermal buildings.

It will be observed from this statement of claim that the word Vichy is not at all accentuated, nor, indeed, mentioned, except incidentally, and it is manifest from an examination of the filed, as well as from the claim, that in the mind of the complainant company the medallion was everything and the word Vichy nothing. In thus registering what it claimed as its trade-mark, it essentially disclaimed any exclusive right to the use of the word Vichy.

The case of Richter v. Anchor Remedy Company, 52 Fed. Rep., 455, is directly in point: "The "opinion says, (p. 458): "But furthermore, "certainly a trade-mark may be abandoned, "and what clearer evidence of abandonment "of the right to the unlimited use of the "anchor emblem could there be, than was "furnished by the plaintiff's restricted registration "on July 17th, 1885. He thereby gave public notice "to all traders, and others in the United States,

"that he adopted as his trade-mark for medical "compounds, not the representation of an anchor "generally, but a red anchor in the (white) oval, "space or field. This limited registration was the "very deliberate act of the plaintiff, and he must "abide by the consequences."

This case was affirmed in Richter v. Reynolds, 59 Fed. Rep., 577.

In the case of Pittsburgh Crushed Steel Co. v. Diamond Steel Co., 85 Fed. Rep., 637-8, the District Court of the Eastern District of Missouri, in 1898, says that by a failure to claim a letter in its specification of a trade mark, a party must be held to have abandoned such feature of its mark to the public, if it ever employed it, and, thereby, to have disclaimed any exclusive right to it. Citing the Richter case, *supra*.

Browne on Trade-Marks, 2" Ed., Sec. 678, lays down the principle that when a word, coined by a manufacturer to indicate a peculiar product, is disused by him, and other persons in the same line of business, by common consent, adopt the word as the most suitable name for the thing, then such name falls into the domain of commerce and is not susceptible of reappropriation by the manufacturer who first used it as a fanciful denomination for his manufacture.

VII

Finally, the case of Saxlehner v. Eisner, 179 U. S., 19, decided by this court in the year 1900, must be regarded as controlling on the main points raised in this case. The opinion in that case was written by Mr. Justice Brown, and distinctly recognizes, and affirms.

1" That a trade-mark cannot be, either descriptive, or geographical (p. 30), and that, therefore, the name Hunyadi, was the proper subject of a trade-mark.

Here the name Vichy is, beyond challenge, geographical, and, therefore, is not a proper subject for a trade-mark.

2" That the word Hunyadi had become, in a sense, generic, indicating an Hungarian bitter water; and, if it thus became generic with the assent, and acquiescence of Saxlehner, he could not, ~~therefore, assert his right to its exclusive use, but~~ thereafter, assert his right to its exclusive use, but that he had never so assented, (p. 33).

Here, the word Vichy has become generic, and, not only with the acquiescence of the complainants for more than a quarter century, but, further, the complainant company made no claim to it in its statement accompanying, and forming part of the registry of its trade-mark.

3" That the competing waters having come into the United States as early as 1886, Saxlehner was guilty of laches in not having sooner sought vindication of his rights, and this, nothwithstanding, some not entirely unreasonable excuses were

offered, for not proceeding earlier with his suit, (p. 35).

4" That by a use of twenty years in Hungary, by other dealers, of the word Hunyadi, it became public property there, and, therefore, here; and that, although by a subsequent change of the Hungarian law, Saxlehner became entitled to its sole use, it worked no such result here (p. 36), and that by inaction for twenty years, the complainant had placed herself outside the requirements of our courts, in such cases, (p. 37).

The delay here is some five years greater than in the Saxlehner case, and there has been no fraud on the part of the defendant.

The Saxlehner case must be regarded as a decisive authority here, and the decree of the court below should be affirmed.

Saratoga Springs, N. Y., October 31", 1903.

EDGAR T. BRACKETT,

Counsel for Respondent.

Supreme Court of the United States.

No. 53.—October Term, 1903.

La Republique Française et al., Petitioners, vs. Saratoga Vichy Spring Company. } On certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[December 7, 1903.]

This was a bill in equity brought in the Circuit Court of the United States for the Northern District of New York, by the French Republic, as owner, and La Compagnie Fermière de l'Etablissement Thermal de Vichy, (hereinafter termed the Vichy Company,) as lessee, of the springs of Vichy, France, against the Saratoga Vichy Spring Company, for the unlawful use of the word "Vichy," claimed by the plaintiffs as a commercial name or trade-mark, and appropriated for the waters of the defendant, which are drawn from a certain natural spring at Saratoga, New York.

Defense: That for fifty years mineral water has been sold throughout the world under the name of "Vichy," and that such name has come to denote a type of water, namely, alkaline, non-cathartic, carbonated water, and does not stand for the water of any one spring; that defendant has never sold Vichy as and for that of the plaintiffs, nor in resemblance thereto, but has so labelled its water that the purchaser shall know that it is a natural mineral water of Saratoga; and that plaintiffs' claim is stale.

The bill was dismissed by the Circuit Court upon the ground that plaintiffs had no exclusive right to the use of the word "Vichy," and that defendant had never been guilty of an attempt to palm off its waters as the imported article. (99 Fed. Rep. 733.) On appeal, the Court of Appeals reversed the decision of the Circuit Court, and granted an injunction against the use of one particular label, or "any other label in which the place of the origin of the water is not as plainly and prominently made known as the fact that it named 'Vichy.'" (107 Fed. Rep. 459.)

Plaintiffs thereupon applied for a writ of certiorari, which was granted. Defendant made no similar application, but acquiesced in the decree and discontinued the offending label.

Mr. Justice Brown delivered the opinion of the Court.

This suit is brought to vindicate the right of plaintiffs to the exclusive use of the word "Vichy" as against the defendant, and incidentally as against all persons making use of the word to denote a water not drawn

from the springs of Vichy, now owned by the French Republic and leased to the Vichy Company.

The title of the French Republic to the springs of Vichy, a commune of France, is clearly established. Known for their medicinal qualities since the time of the Roman Empire and originally belonging to the feudal lord of Vichy, they were sold by him in 1444, together with the castle and its dependencies, to Pierre, Duke of Bourbon, in whose family they remained until 1531, when, for the treason of the Constable of Bourbon, they were confiscated by Francis I, and became the property of the crown, in whose possession they remained until 1790, when they were united to the public domain and afterwards passed to the French Republic and its successors, and were operated directly by the officers of the state until June, 1853, when they were leased for a fixed rental to a firm of which the Vichy Company is the successor. The bottling and exportation of the waters was commenced before 1716, and in 1853 they began to be exported directly to this country, the shipments in 1893 amounting to about 300,000 bottles. For many years they have been bottled and sold all over the world.

The rights of the defendant originated from a spring discovered in 1872 in the township of Saratoga Springs, New York, the waters of which, though differing from the water of the Vichy Spring both in ingredients and taste, have a certain resemblance to them which suggested the use of the word "Vichy." The water began to be bottled and sold in 1873 by the owners of the spring, and in 1876 became the property of the defendant, which has since sold the water, using various bottles, circulars and labels, containing more or less conspicuously displayed the word "Vichy."

1. As the waters of Vichy had been known for centuries under that name there is reason for saying the plaintiffs had in 1872 acquired an exclusive right to the use of the word "Vichy" as against every one whose waters were not drawn from the springs of Vichy, or at least, as observed by a French court, "from the same hydrographical region which may be called generally the basin of Vichy."

True the name is geographical; but geographical names often acquire a secondary signification indicative not only of the place of manufacture or production, but of the name of the manufacturer or producer and the excellence of the thing manufactured or produced, which enables the owner to assert an exclusive right to such name as against every one not doing business within the same geographical limits; and even as against them, if the name be used fraudulently for the purpose of misleading buyers as to the actual origin of the thing produced, or of palming off the productions of one person as those of another. (*Elgin National Watch Company* v. *Illinois Watch Company*, 179 U. S. 665; *Newman* v. *Alvord*, 51 N. Y. 189; *Lee* v. *Haley*, 5 Ch. App. 155; *Wotherspoon* v. *Currie*, L. R. 5 H. L.

508; *Braham* v. *Beachim*, 7 Ch. Div. 848; *Thompson* v. *Montgomery*, 41 Ch. Div. 35; *Seixo* v. *Provezendo*, L. R. 1 Ch. App. 192.)

In a French case arising in this connection, and brought by the Vichy Company against a rival company owning two springs in the same neighborhood, complaining that by the composition of its name and the arrangement of its labels, as well as by the tenor of its different appeals to the public, the company owning these springs had created a damaging confusion between the two companies and their product, it was held that, while the rival company had a right to the use of the word "Vichy," it was bound to state the name of its springs, the place where they were located as "near Vichy" in letters identical in height and thickness as those of the word Vichy in their advertisements and labels, and also the name of their springs in letters at least half their size—in other words, it was bound to adopt such precautions as would fully apprise the public that it was not purporting to sell the waters of the original Vichy Company, though being in the same basin, they were entitled to use that designation.

2. A serious difficulty in the way of enforcing an exclusive right on the part of the plaintiffs to the use of the word Vichy is their apparent acquiescence in such use by others. For thirty years the defendant, the Saratoga Vichy Company, has been openly and notoriously bottling and selling its waters under the name of the "Saratoga Vichy" until its competition has become an extremely serious matter to the plaintiffs, whose importations began in 1853 with only 316 bottles, which by the year 1893 had increased to 298,500 bottles. The entire shipment of the Vichy Company amounted in 1896 to nearly ten millions of bottles. Under such circumstances, and in view of the further facts that other waters were openly manufactured and sold in this country under the name of Vichy, and that a manufactured water was dealt out by the glass under that name in innumerable soda water fountains throughout the country, as shown by the record in this case, it is impossible to suppose that the plaintiffs were not aware of these infringements upon their exclusive rights. It argues much more than ordinary indifference and inattention to suppose that the large amount of this rival water could be advertised and sold all over the country without the knowledge of their agents, who would naturally be active in the protection of their own interests, if not the interests of their principals. In fact, they had allowed the name to become generic and indicative of the character of the water. With all these facts before them, and with the yearly increasing sales and competition of the defendant company, no move was made against them for twenty-five years, and until 1898, when this bill was filed. A clearer case of laches could hardly exist. (*Saxlehner* v. *Eisner*, 179 U. S. 19, 36.)

It is said, however, that the doctrine of laches has no application to the neglect of the government to pursue trespassers upon its rights, and that

the French Republic is entitled to the benefit of that rule. It is at least open to doubt whether the maxim *nullum tempus*, applicable to our own government, can be invoked in behalf of a foreign government suing in our courts. The doctrine is one of public policy, and is based upon the assumption that the officers of the government may be so busily engaged in the ordinary affairs of state as to neglect a vindication of its interests in the courts. Whether this exemption can be set up by a foreign government in the prosecution of suits against our own citizens—in other words, whether the latter are not entitled to the benefit of the ordinary defenses at law, is a question which does not necessarily arise in this case, and as to which we are not called upon to express an opinion.

However this may be, it is clear that the rule of *nullum tempus* cannot be invoked in this case. While the French Republic is nominally the plaintiff, its interest in the litigation is little, if anything, more than nominal. For fifty years it has ceased to operate these springs through its own agents, since in 1853 the then Emperor of the French leased them to the predecessors of the Vichy Company, which has since that time bottled and sold the water under successive leases as its own, upon the payment of an annual rental of 100,000 francs to the government. Its present lease does not expire until 1934. It thus appears that the French Republic has had no real interest in the product of the springs for fifty years, and that it can have no such interest for thirty years to come. Its only title to sue, then, is in a possible depreciation of the rental value of this property after the lapse of the present lease, caused by the unlawful use of the name Vichy by the defendant. This is quite too inappreciable to answer the defense of laches, and, indeed, it is doubtful whether it justifies its joinder as co-plaintiff in the suit. To hold that the French Republic appears in this litigation to be suing for the use and benefit of the Vichy Company would more accurately describe their relations.

In such cases, either where the government is suing for the use and benefit of an individual, or for the prosecution of a private and proprietary instead of a public or governmental right, it is clear that it is not entitled to the exemption of *nullum tempus*, and that the ordinary rule of laches applies in full force. (*United States* v. *Beebe*, 127 U. S. 338; *New Hampshire* v. *Louisiana*, 108 U. S. 76; *Maryland* v. *Baldwin*, 112 U. S. 490; *United States* v. *Des Moines &c. Co.*, 142 U. S. 510, 538; *Curtner* v. *United States*, 149 U. S. 662; *United States* v. *American Bell Telephone Co.*, 167 U. S. 224, 264; *Miller* v. *The State*, 38 Ala. 600; *Moody* v. *Fleming*, 4 Geo. 115.)

The plaintiffs, then, are put in this dilemma: If the Republic be a necessary party to the suit here, as it sues in its private and proprietary capacity, the defense of laches is available against it. Upon the other hand, if it be

an unnecessary party, the defense of laches may certainly be set up against the Vichy Company, its co-plaintiff.

We do not think the position of the plaintiffs in this connection is affected or strengthened by the eighth article of the treaty of June 11, 1887, with France and other nations, known as the Industrial Property Treaty, (Comp. of Treaties, 684,) which declares that "the commercial name shall be protected in all the countries of the Union without obligation of deposit, whether it forms part or not, of a trade or commercial mark." That article was evidently designed merely to protect the citizens of other countries in their right to a trade-mark or commercial name, and their right to sue in the courts of this country, as if they were citizens of the United States. It could never have been intended to put them on a more favorable footing than our own citizens, or to exempt them from the ordinary defenses that might be made by the party prosecuting.

This is made the more apparent from Art. II of the treaty, which reads as follows: "The subjects or citizens of each of the contracting States shall enjoy, in all the other States of the Union, so far as concerns patents for inventions, trade or commercial marks, and the commercial name, the advantages that the respective laws thereof at present accord, or shall afterwards accord to citizens or subjects. In consequence they shall have the same protection as these latter, and the same legal recourse against all infringements of their rights, under reserve of complying with the formalities and conditions imposed upon subjects or citizens by the domestic legislation of each State."

If there were any doubt about the rights of the plaintiffs under the eighth article they are completely removed by the wording of the second. The rights of the French Republic are the same, and no greater under this article than those of the United States would be.

3. But conceding that the defense of laches would not be available in a case of actual fraud, or an attempt to foist upon the public the waters of the defendant as those of the original Vichy spring, (*McIntyre* v. *Pryor*, 173 U. S. 38; *Saxlehner* v. *Eisner &c. Co.* 179 U. S. 19; *Prevost* v. *Gratz*, 6 Wheat. 481, 497; *McLean* v. *Fleming*, 96 U. S. 245; *Menendez* v. *Holt*, 128 U. S. 514,) we find but little evidence of such purpose in this record. The two waters not only differ in their ingredients and taste, but the French Vichy is a still, and the Saratoga Vichy, as well as the other American Vichies, an effervescing water. There is no attempt made whatever by the defendant to simulate the label of the plaintiffs upon the body of the bottle. The word Vichy is never used by the defendant alone, but always in connection with Saratoga. The two labels not only differ wholly in their design and contents, but even in their language, that of the plaintiffs being wholly in French. Plaintiff's label contains the word Vichy prominently displayed with a picture of the

thermal establishment where it is bottled, and the name of the particular spring. Defendant's label contains the two words, "Saratoga Vichy," in type of the same size and displayed with equal prominence, and a statement that the Saratoga Vichy is far superior to the imported Vichy. It is true that in 1896 a small label was attached to the neck of the bottle upon which the name Vichy was more prominent than that of Saratoga. This label was printed upon a white background, with the word Vichy in prominent red letters, while the word Saratoga appeared in much smaller black letters included between the extended "V" and "Y" of the word Vichy. The Circuit Court considered this to be immaterial, and thought it inconceivable that any one of ordinary perception could be induced to buy this water as the imported Vichy. A majority of the Court of Appeals, however, while agreeing with the Circuit Court as to the total dissimilarity of the main labels, thought a purchaser might be deceived by the neck label into buying the Saratoga for the imported article, and in that particular reversed the Circuit Court, and enjoined the use of the neck label, or of any other label in which the place of the origin of the water was not as plainly and as prominently made known as the word Vichy. As the defendant did not apply for a certiorari, and has acquiesced in the decree of the Circuit Court of Appeals by changing the offending label, we are not called upon to express an opinion as to the deceptive character of this label. (*Hubbard* v. *Tod*, 175 U. S. 474.)

It was said by this court in *Canal* v. *Clark*, (13 Wall. 322,) "In all cases where rights to the exclusive use of a trade-mark are invaded, it is invariably held that the essence of the wrong consists in the sale of goods of one manufacturer or vendor as those of another; and that it is only when this false representation is directly or indirectly made that the party who appeals to a court of equity can have relief." Applying this doctrine to the case under consideration we are clearly of the opinion that there is no such similarity in the labels as at present used, and that there is no such fraud shown in the conduct of the defendant as would authorize us to say that plaintiffs are entitled to relief.

The decree of the Court of Appeals is therefore

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.